

2 ESHB 2737 - S AMD
3 By Senator Skratek

4 ADOPTED 3/9/94

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 43.163.010 and 1989 c 279 s 2 are each amended to
8 read as follows:

9 As used in this chapter, the following words and terms have the
10 following meanings, unless the context requires otherwise:

11 (1) "Authority" means the Washington economic development finance
12 authority created under RCW 43.163.020 or any board, body, commission,
13 department or officer succeeding to the principal functions of the
14 authority or to whom the powers conferred upon the authority shall be
15 given by law;

16 (2) "Bonds" means any bonds, notes, debentures, interim
17 certificates, conditional sales or lease financing agreements, lines of
18 credit, forward purchase agreements, investment agreements, and other
19 banking or financial arrangements, guaranties, or other obligations
20 issued by or entered into by the authority. Such bonds may be issued
21 on either a tax-exempt or taxable basis;

22 (3) "Borrower" means one or more public or private persons or
23 entities acting as lessee, purchaser, mortgagor, or borrower who has
24 obtained or is seeking to obtain financing either from the authority or
25 from an eligible banking organization that has obtained or is seeking
26 to obtain funds from the authority to finance a project. A borrower
27 may include a party who transfers the right of use and occupancy to
28 another party by lease, sublease or otherwise, or a party who is
29 seeking or has obtained a financial guaranty from the authority;

30 (4) "Eligible banking organization" means any organization subject
31 to regulation by the (~~state supervisor of banking or the state~~
32 ~~supervisor of savings and loans~~) director of the department of
33 financial institutions, any national bank, federal savings and loan
34 association, and federal credit union located within this state;

35 (5) "Eligible export transaction" means any preexport or export
36 activity by a person or entity located in the state of Washington

1 involving a sale for export and product sale which, in the judgment of
2 the authority: (a) Will create or maintain employment in the state of
3 Washington, (b) will obtain a material percent of its value from
4 manufactured goods or services made, processed or occurring in
5 Washington, and (c) could not otherwise obtain financing on reasonable
6 terms from an eligible banking organization;

7 (6) "Eligible farmer" means any person who is a resident of the
8 state of Washington and whose specific acreage qualifying for receipts
9 from the federal department of agriculture under its conservation
10 reserve program is within the state of Washington;

11 (7) "Eligible person" means an individual, partnership,
12 corporation, or joint venture carrying on business, or proposing to
13 carry on business within the state and is seeking financial assistance
14 under section 4 of this act;

15 (8) "Financial assistance" means the infusion of capital to persons
16 for use in the development and exploitation of specific inventions and
17 products;

18 (9) "Financing document" means an instrument executed by the
19 authority and one or more persons or entities pertaining to the
20 issuance of or security for bonds, or the application of the proceeds
21 of bonds or other funds of, or payable to, the authority. A financing
22 document may include, but need not be limited to, a lease, installment
23 sale agreement, conditional sale agreement, mortgage, loan agreement,
24 trust agreement or indenture, security agreement, letter or line of
25 credit, reimbursement agreement, insurance policy, guaranty agreement,
26 or currency or interest rate swap agreement. A financing document also
27 may be an agreement between the authority and an eligible banking
28 organization which has agreed to make a loan to a borrower;

29 ((+8+)) (10) "Plan" means the general plan of economic development
30 finance objectives developed and adopted by the authority, and updated
31 from time to time, as required under RCW 43.163.090((-))i

32 (11) "Economic development activities" means activities related to:
33 Manufacturing, processing, research, production, assembly, tooling,
34 warehousing, pollution control, energy generating, conservation,
35 transmission, and sports facilities and industrial parks;

36 (12) "Project costs" means costs of:

37 (a) Acquisition, lease, construction, reconstruction, remodeling,
38 refurbishing, rehabilitation, extension, and enlargement of land,
39 rights to land, buildings, structures, docks, wharves, fixtures,

1 machinery, equipment, excavations, paving, landscaping, utilities,
2 approaches, roadways and parking, handling and storage areas, and
3 similar ancillary facilities, and any other real or personal property
4 included in an economic development activity;

5 (b) Architectural, engineering, consulting, accounting, and legal
6 costs related directly to the development, financing, acquisition,
7 lease, construction, reconstruction, remodeling, refurbishing,
8 rehabilitation, extension, and enlargement of an activity included
9 under subsection (11) of this section, including costs of studies
10 assessing the feasibility of an economic development activity;

11 (c) Finance costs, including the costs of credit enhancement and
12 discounts, if any, the costs of issuing revenue bonds, and costs
13 incurred in carrying out any financing document;

14 (d) Start-up costs, working capital, capitalized research and
15 development costs, capitalized interest during construction and during
16 the eighteen months after estimated completion of construction, and
17 capitalized debt service or repair and replacement or other appropriate
18 reserves;

19 (e) The refunding of any outstanding obligations incurred for any
20 of the costs outlined in this subsection; and

21 (f) Other costs incidental to any of the costs listed in this
22 section;

23 (13) "Product" means a product, device, technique, or process that
24 is or may be exploitable commercially. "Product" does not refer to
25 pure research, but shall be construed to apply to products, devices,
26 techniques, or processes that have advanced beyond the theoretic stage
27 and are readily capable of being, or have been, reduced to practice;

28 (14) "Financing agreements" means, and includes without limitation,
29 a contractual arrangement with an eligible person whereby the authority
30 obtains rights from or in an invention or product or proceeds from an
31 invention or product in exchange for the granting of financial and
32 other assistance to the person.

33 **Sec. 2.** RCW 43.163.080 and 1990 c 53 s 5 are each amended to read
34 as follows:

35 (1) The authority shall adopt general operating procedures for the
36 authority. The authority shall also adopt operating procedures for
37 individual programs as they are developed for obtaining funds and for
38 providing funds to borrowers. These operating procedures shall be

1 adopted by resolution prior to the authority operating the applicable
2 programs.

3 (2) The operating procedures shall include, but are not limited to:

4 (a) Appropriate minimum reserve requirements to secure the authority's
5 bonds and other obligations; (b) appropriate standards for securing
6 loans and other financing the authority provides to borrowers, such as
7 guarantees or collateral; and (c) (~~appropriate~~) strict standards for
8 providing financing to borrowers, such as (i) the borrower is a
9 responsible party with a high probability of being able to repay the
10 financing provided by the authority, (ii) the financing is reasonably
11 expected to provide economic growth or stability in the state by
12 enabling a borrower to increase or maintain jobs or capital in the
13 state, (iii) the borrowers with the greatest needs or that provide the
14 most public benefit are given higher priority by the authority, and
15 (iv) the financing is consistent with any plan adopted by the authority
16 under RCW 43.163.090.

17 **Sec. 3.** RCW 43.163.120 and 1989 c 279 s 13 are each amended to
18 read as follows:

19 The authority shall receive no appropriation of state funds. The
20 department of community, trade, and economic development shall provide
21 staff to the authority, to the extent permitted by law, to enable the
22 authority to accomplish its purposes; the staff from the department of
23 community, trade, and economic development may assist the authority in
24 organizing itself and in designing programs, but shall not be involved
25 in the issuance of bonds or in making credit decisions regarding
26 financing provided to borrowers by the authority. The authority shall
27 report each December on its activities to the (~~house trade and
28 economic development committee and to the senate economic development
29 and labor committee~~) appropriate standing committees of the house of
30 representatives and senate.

31 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.163 RCW
32 to read as follows:

33 For the purpose of facilitating economic development in the state
34 of Washington and encouraging the employment of Washington workers at
35 meaningful wages:

36 (1) The authority may develop and conduct a program or programs to
37 provide nonrecourse revenue bond financing for the project costs for no

1 more than five economic development activities, per year, included
2 under the authority's general plan of economic development finance
3 objectives;

4 (2) The authority may also develop and conduct a program that will
5 stimulate and encourage the development of new products within
6 Washington state by the infusion of financial aid for invention and
7 innovation in situations in which the financial aid would not otherwise
8 be reasonably available from commercial sources. The authority is
9 authorized to provide nonrecourse revenue bond financing for this
10 program.

11 (a) For the purposes of this program, the authority shall have the
12 following powers and duties:

13 (i) To enter into financing agreements with eligible persons doing
14 business in Washington state, upon terms and on conditions consistent
15 with the purposes of this chapter, for the advancement of financial and
16 other assistance to the persons for the development of specific
17 products, procedures, and techniques, to be developed and produced in
18 this state, and to condition the agreements upon contractual assurances
19 that the benefits of increasing or maintaining employment and tax
20 revenues shall remain in this state and accrue to it;

21 (ii) Own, possess, and take license in patents, copyrights, and
22 proprietary processes and negotiate and enter into contracts and
23 establish charges for the use of the patents, copyrights, and
24 proprietary processes when the patents and licenses for products result
25 from assistance provided by the authority;

26 (iii) Negotiate royalty payments to the authority on patents and
27 licenses for products arising as a result of assistance provided by the
28 authority;

29 (iv) Negotiate and enter into other types of contracts with
30 eligible persons that assure that public benefits will result from the
31 provision of services by the authority; provided that the contracts are
32 consistent with the state Constitution;

33 (v) Encourage and provide technical assistance to eligible persons
34 in the process of developing new products;

35 (vi) Refer eligible persons to researchers or laboratories for the
36 purpose of testing and evaluating new products, processes, or
37 innovations; and

38 (vii) To the extent permitted under its contract with eligible
39 persons, to consent to a termination, modification, forgiveness, or

1 other change of a term of a contractual right, payment, royalty,
2 contract, or agreement of any kind to which the authority is a party.

3 (b) Eligible persons seeking financial and other assistance under
4 this program shall forward an application, together with an application
5 fee prescribed by rule, to the authority. An investigation and report
6 concerning the advisability of approving an application for assistance
7 shall be completed by the staff of the authority. The investigation
8 and report may include, but is not limited to, facts about the company
9 under consideration as its history, wage standards, job opportunities,
10 stability of employment, past and present financial condition and
11 structure, pro forma income statements, present and future markets and
12 prospects, integrity of management as well as the feasibility of the
13 proposed product and invention to be granted financial aid, including
14 the state of development of the product as well as the likelihood of
15 its commercial feasibility. After receipt and consideration of the
16 report set out in this subsection and after other action as is deemed
17 appropriate, the application shall be approved or denied by the
18 authority. The applicant shall be promptly notified of action by the
19 authority. In making the decision as to approval or denial of an
20 application, priority shall be given to those persons operating or
21 planning to operate businesses of special importance to Washington's
22 economy, including, but not limited to: (i) Existing resource-based
23 industries of agriculture, forestry, and fisheries; (ii) existing
24 advanced technology industries of electronics, computer and instrument
25 manufacturing, computer software, and information and design; and (iii)
26 emerging industries such as environmental technology, biotechnology,
27 biomedical sciences, materials sciences, and optics.

28 (3) The authority may also develop and implement, if authorized by
29 the legislature, such other economic development financing programs
30 adopted in future general plans of economic development finance
31 objectives developed under RCW 43.163.090.

32 (4) The authority may not issue any bonds for the programs
33 authorized under this section after June 30, 2000.

34 **Sec. 5.** RCW 43.163.130 and 1989 c 279 s 14 are each amended to
35 read as follows:

36 (1) The authority may issue its nonrecourse revenue bonds in order
37 to obtain the funds to carry out the programs authorized in this
38 chapter. The bonds shall be special obligations of the authority,

1 payable solely out of the special fund or funds established by the
2 authority for their repayment.

3 (2) Any bonds issued under this chapter may be secured by a
4 financing document between the authority and the purchasers or owners
5 of such bonds or between the authority and a corporate trustee, which
6 may be any trust company or bank having the powers of a trust company
7 within or without the state.

8 (a) The financing document may pledge or assign, in whole or in
9 part, the revenues and funds held or to be received by the authority,
10 any present or future contract or other rights to receive the same, and
11 the proceeds thereof.

12 (b) The financing document may contain such provisions for
13 protecting and enforcing the rights, security, and remedies of
14 bondowners as may be reasonable and proper, including, without limiting
15 the generality of the foregoing, provisions defining defaults and
16 providing for remedies in the event of default which may include the
17 acceleration of maturities, restrictions on the individual rights of
18 action by bondowners, and covenants setting forth duties of and
19 limitations on the authority in conduct of its programs and the
20 management of its property.

21 (c) In addition to other security provided in this chapter or
22 otherwise by law, bonds issued by the authority may be secured, in
23 whole or in part, by financial guaranties, by insurance or by letters
24 of credit issued to the authority or a trustee or any other person, by
25 any bank, trust company, insurance or surety company or other financial
26 institution, within or without the state. The authority may pledge or
27 assign, in whole or in part, the revenues and funds held or to be
28 received by the authority, any present or future contract or other
29 rights to receive the same, and the proceeds thereof, as security for
30 such guaranties or insurance or for the reimbursement by the authority
31 to any issuer of such letter of credit of any payments made under such
32 letter of credit.

33 (3) Without limiting the powers of the authority contained in this
34 chapter, in connection with each issue of its obligation bonds, the
35 authority shall create and establish one or more special funds,
36 including, but not limited to debt service and sinking funds, reserve
37 funds, project funds, and such other special funds as the authority
38 deems necessary, useful, or convenient.

1 (4) Any security interest created against the unexpended bond
2 proceeds and against the special funds created by the authority shall
3 be immediately valid and binding against the money and any securities
4 in which the money may be invested without authority or trustee
5 possession. The security interest shall be prior to any party having
6 any competing claim against the moneys or securities, without filing or
7 recording under Article 9 of the Uniform Commercial Code, Title 62A
8 RCW, and regardless of whether the party has notice of the security
9 interest.

10 (5) The bonds may be issued as serial bonds, term bonds or any
11 other type of bond instrument consistent with the provisions of this
12 chapter. The bonds shall bear such date or dates; mature at such time
13 or times; bear interest at such rate or rates, either fixed or
14 variable; be payable at such time or times; be in such denominations;
15 be in such form; bear such privileges of transferability,
16 exchangeability, and interchangeability; be subject to such terms of
17 redemption; and be sold at public or private sale, in such manner, at
18 such time or times, and at such price or prices as the authority shall
19 determine. The bonds shall be executed by the manual or facsimile
20 signatures of the authority's chair and either its secretary or
21 executive director, and may be authenticated by the trustee (if the
22 authority determines to use a trustee) or any registrar which may be
23 designated for the bonds by the authority.

24 (6) Bonds may be issued by the authority to refund other
25 outstanding authority bonds, at or prior to maturity of, and to pay any
26 redemption premium on, the outstanding bonds. Bonds issued for
27 refunding purposes may be combined with bonds issued for the financing
28 or refinancing of new projects. Pending the application of the
29 proceeds of the refunding bonds to the redemption of the bonds to be
30 redeemed, the authority may enter into an agreement or agreements with
31 a corporate trustee regarding the interim investment of the proceeds
32 and the application of the proceeds and the earnings on the proceeds to
33 the payment of the principal of and interest on, and the redemption of,
34 the bonds to be redeemed.

35 (7) The bonds of the authority may be negotiable instruments under
36 Title 62A RCW.

37 (8) Neither the members of the authority, nor its employees or
38 agents, nor any person executing the bonds shall be personally liable

1 on the bonds or be subject to any personal liability or accountability
2 by reason of the issuance of the bonds.

3 (9) The authority may purchase its bonds with any of its funds
4 available for the purchase. The authority may hold, pledge, cancel or
5 resell the bonds subject to and in accordance with agreements with
6 bondowners.

7 (10) The authority shall not exceed two hundred fifty million
8 dollars in total outstanding debt at any time.

9 (11) The state finance committee shall be notified in advance of
10 the issuance of bonds by the authority in order to promote the orderly
11 offering of obligations in the financial markets.

12 (12) The authority may not issue any bonds after June 30, 2000.

13 NEW SECTION. **Sec. 6.** If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected.

17 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
18 preservation of the public peace, health, or safety, or support of the
19 state government and its existing public institutions, and shall take
20 effect immediately."

21 **ESHB 2737** - S AMD
22 By Senator Skratek

23 ADOPTED 3/9/94

24 On page 1, line 2 of the title, after "authority;" strike the
25 remainder of the title and insert "amending RCW 43.163.010, 43.163.080,
26 43.163.120, and 43.163.130; adding a new section to chapter 43.163 RCW;
27 and declaring an emergency."

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