
ENGROSSED SUBSTITUTE HOUSE BILL 2360

State of Washington

55th Legislature

1998 Regular Session

By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives L. Thomas, Romero, Huff, Wolfe, Ogden, H. Sommers, D. Schmidt, Gardner and Anderson; by request of State Treasurer)

Read first time 01/28/98. Referred to Committee on .

1 AN ACT Relating to financing contracts; amending RCW 39.94.010,
2 39.94.020, 39.94.030, and 39.94.040; adding a new section to chapter
3 39.94 RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 39.94 RCW
6 to read as follows:

7 (1) It is the intent of the legislature that the financing program
8 authorized by this chapter be self-supporting.

9 (2) The state treasurer is authorized to levy fees and apply
10 specified investment earnings from time to time in amounts not to
11 exceed sums sufficient to pay program expenses including, but not
12 limited to, costs of issuance, and to create reserves to assure timely
13 payment of financing contracts. The investment earnings available for
14 this purpose represent the earnings on payments received from state and
15 other agencies.

16 **Sec. 2.** RCW 39.94.010 and 1989 c 356 s 1 are each amended to read
17 as follows:

1 The purposes of this chapter are to confirm the authority of the
2 state, its agencies, departments, and instrumentalities, the state
3 board for community (~~college education~~) and technical colleges, and
4 the state institutions of higher education to enter into contracts for
5 the acquisition of real and personal property which provide for
6 payments over a term of more than one year and to exclude such
7 contracts from the computation of indebtedness under RCW 39.42.060 and
8 Article VIII, section 1 of the state Constitution. It is further the
9 purpose of this chapter to permit the state, its agencies, departments,
10 and instrumentalities, the state board for community (~~college~~
11 ~~education~~) and technical colleges, and the state institutions of
12 higher education to enter into financing contracts which make provision
13 for the issuance of certificates of participation and other financing
14 structures. Financing contracts of the state, whether or not entered
15 into under this chapter, shall be subject to approval by the state
16 finance committee except as provided in this chapter.

17 This chapter shall be liberally construed to effect its purposes.

18 **Sec. 3.** RCW 39.94.020 and 1990 c 47 s 3 are each amended to read
19 as follows:

20 Unless the context clearly requires otherwise, the definitions in
21 this section apply throughout this chapter.

22 (1) "Credit enhancement" includes insurance, letters of credit,
23 lines of credit, or other similar agreements which enhance the security
24 for the payment of the state's or an other agency's obligations under
25 financing contracts.

26 (2) "Financing contract" means any contract entered into by the
27 state for itself or on behalf of an other agency which provides for the
28 use and purchase of real or personal property by the state and provides
29 for payment by the state over a term of more than one year, and which
30 provides that title to the subject property (~~shall~~) may secure
31 performance of the state or transfer to the state or an other agency by
32 the end of the term, upon exercise of an option, for a nominal amount
33 or for a price determined without reference to fair market value.
34 Financing contracts shall include, but not be limited to, conditional
35 sales contracts, financing leases, lease purchase contracts, or
36 refinancing contracts, but shall not include operating or true leases.
37 For purposes of this chapter, the term "financing contract" shall not
38 include any nonrecourse financing contract or other obligation payable

1 only from money or other property received from private sources and not
2 payable from any public money or property. The term "financing
3 contract" shall include a "master financing contract."

4 (3) "Master financing contract" means a financing contract which
5 provides for the use and purchase of property by the state, and which
6 may include more than one financing contract and appropriation.

7 (4) "Other agency" means any commission established under Title 15
8 RCW, a library or regional library, an educational service district,
9 the superintendent of public instruction, the school directors'
10 association, a health district, or any county, city, town, school
11 district, or other municipal corporation or quasi municipal corporation
12 described as such by statute.

13 (5) "State" means the state, agency, department, or instrumentality
14 of the state, the state board for community (~~college education~~) and
15 technical colleges, and any state institution of higher education.

16 (~~(+5)~~) (6) "State finance committee" means the state finance
17 committee under chapter 43.33 RCW.

18 (~~(+6)~~) (7) "Trustee" means a bank or trust company, within or
19 without the state, authorized by law to exercise trust powers.

20 **Sec. 4.** RCW 39.94.030 and 1989 c 356 s 3 are each amended to read
21 as follows:

22 (1) The state may enter into financing contracts for itself or on
23 behalf of an other agency for the use and acquisition for public
24 purposes of real and personal property. Payments under financing
25 contracts of the state shall be made by the state from currently
26 appropriated funds or funds not constituting "general state revenues"
27 as defined in Article VIII, section 1 of the state Constitution.
28 Except as provided in subsection (4)(b) of this section, payments under
29 financing contracts of the state on behalf of any other agency shall be
30 made solely from the sources identified in the financing contract,
31 which may not obligate general state revenues as defined in Article
32 VIII, section 1, of the state Constitution. The treasurer of an other
33 agency shall remit payments under financing contracts to the office of
34 the state treasurer or to the state treasurer's designee. In the event
35 of any deficiency of payments by an other agency under a financing
36 contract, the treasurer of the other agency shall transfer any legally
37 available funds of the other agency in satisfaction of the other
38 agency's obligations under the financing contract if such funds have

1 been obligated by the other agency under the financing contract and, if
2 such deficiency is not thereby cured, the office of the state treasurer
3 is directed to withdraw from that agency's share of state revenues for
4 distribution or other money an amount sufficient to fulfill the terms
5 and conditions of the financing contract. The term of any financing
6 contract shall not exceed thirty years or the remaining useful life of
7 the property, whichever is shorter. Financing contracts may include
8 other terms and conditions agreed upon by the parties.

9 (2) The state for itself or on behalf of an other agency may enter
10 into contracts for credit enhancement, which shall limit the recourse
11 of the provider of credit enhancement solely to the security provided
12 under the financing contract secured by the credit enhancement.

13 (3) The state or an other agency may grant a security interest in
14 real or personal property acquired under financing contracts. The
15 security interest may be perfected as provided by the uniform
16 commercial code - secured transactions, or otherwise as provided by law
17 for perfecting liens on real estate. Other terms and conditions may be
18 included as agreed upon by the parties.

19 (4)(a) Except under (b) of this subsection, financing contracts and
20 contracts for credit enhancement entered into under the limitations set
21 forth in this chapter shall not constitute a debt or the contracting of
22 indebtedness under RCW 39.42.060 or any other law limiting debt of the
23 state. It is the intent of the legislature that such contracts also
24 shall not constitute a debt or the contracting of indebtedness under
25 Article VIII, section 1 of the state Constitution. Certificates of
26 participation in payments to be made under financing contracts also
27 shall not constitute a debt or the contracting of an indebtedness under
28 RCW 39.42.060 if payment is conditioned upon payment by the state under
29 the financing contract with respect to which the same relates. It is
30 the intent of the legislature that such certificates also shall not
31 constitute a debt or the contracting of indebtedness under Article
32 VIII, section 1 of the state Constitution if payment of the
33 certificates is conditioned upon payment by the state under the
34 financing contract with respect to which those certificates relate.

35 (b) A financing contract made by the state on behalf of an other
36 agency may be secured by the pledge of revenues of the other agency or
37 other agency's full faith and credit or may, at the option of the state
38 finance committee, include a contingent obligation by the state for
39 payment under such financing contract.

1 **Sec. 5.** RCW 39.94.040 and 1989 c 356 s 4 are each amended to read
2 as follows:

3 (1) Except as provided in RCW 28B.10.022, the state may not enter
4 into any financing contract for itself if the aggregate principal
5 amount payable thereunder is greater than an amount to be established
6 from time to time by the state finance committee or participate in a
7 program providing for the issuance of certificates of participation,
8 including any contract for credit enhancement, without the prior
9 approval of the state finance committee. Except as provided in RCW
10 28B.10.022, the state finance committee shall approve the form of all
11 financing contracts or a standard format for all financing contracts.
12 The state finance committee also may:

13 (a) Consolidate existing or potential financing contracts into
14 master financing contracts with respect to property acquired by one or
15 more agencies, departments, instrumentalities of the state, the state
16 board for community (~~college education~~) and technical colleges, or a
17 state institution of higher learning; or to be acquired by an other
18 agency;

19 (b) Approve programs providing for the issuance of certificates of
20 participation in master financing contracts for the state or for other
21 agencies;

22 (c) Enter into agreements with trustees relating to master
23 financing contracts; and

24 (d) Make appropriate rules for the performance of its duties under
25 this chapter.

26 (2) In the performance of its duties under this chapter, the state
27 finance committee may consult with representatives from the department
28 of general administration, the office of financial management, and the
29 department of information services.

30 (3) With the approval of the state finance committee, the state
31 also may enter into agreements with trustees relating to financing
32 contracts and the issuance of certificates of participation.

33 (4) The state may not enter into any financing contract for real
34 property of the state without prior approval of the legislature.

35 (5) The state may not enter into any financing contract on behalf
36 of an other agency without the approval of such a financing contract by
37 the governing body of the other agency.

1 NEW SECTION. **Sec. 6.** Chapter . . . , Laws of 1998 (this act) is
2 applicable to an other agency, as defined in RCW 39.94.020, for the
3 financing of equipment on September 1, 1998, and for the financing of
4 real estate on July 1, 2000.

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