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SENATE BILL 6140

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State of Washington                      62nd Legislature                      2012 Regular Session

By Senators Kilmer, Becker, King, Regala, Conway, Shin, and Chase

Read first time 01/12/12. Referred to Committee on Economic Development, Trade & Innovation.

1            AN ACT Relating to local economic development financing; amending  
2            RCW 43.163.060; adding a new chapter to Title 39 RCW; and prescribing  
3            penalties.

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

5            NEW SECTION.    **Sec. 1.**    (1) The legislature finds that the issuance  
6            of taxable nonrecourse revenue bonds by the Washington economic  
7            development finance authority has provided a number of Washington firms  
8            with the financing necessary to grow and create jobs. The legislature  
9            further finds that municipal authority to issue taxable nonrecourse  
10           revenue bonds does not exist and that authorizing the local issuance of  
11           taxable bonds for economic development purposes will increase local  
12           capacity to strengthen businesses and create jobs.

13           (2) It is the purpose of this chapter to permit the creation of  
14           local economic development finance authorities to act as a financial  
15           conduit that, without using state funds or lending the credit of the  
16           state or local governments, can issue taxable and nontaxable  
17           nonrecourse revenue bonds, and participate in federal, state, and local  
18           economic development programs to help facilitate access to needed  
19           capital by Washington businesses. It is also a primary purpose of this

1 chapter to encourage the development of local innovative approaches to  
2 the problem of unmet capital needs. This chapter must be construed  
3 liberally to carry out its purposes and objectives.

4 NEW SECTION. **Sec. 2.** The definitions in this section apply  
5 throughout this chapter unless the context clearly requires otherwise.

6 (1) "Authority" means a local economic development finance  
7 authority created under this chapter. An authority is a public body  
8 within the meaning of RCW 39.53.010.

9 (2) "Board of directors" means the board of directors of an  
10 authority.

11 (3) "Bonds" means any bonds, notes, debentures, interim  
12 certificates, conditional sales or lease financing agreements, lines of  
13 credit, forward purchase agreements, investment agreements, and other  
14 banking or financial arrangements, guaranties, or other obligations  
15 issued by or entered into by the authority. Such bonds may be issued  
16 on either a tax-exempt or taxable basis.

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

25 (5) "Economic development activities" means activities related to:  
26 Manufacturing, processing, the commercialization of research,  
27 production, assembly, tooling, warehousing, exporting products made in  
28 Washington or services provided by Washington firms, airports, docks  
29 and wharves, mass commuting facilities, high-speed intercity rail  
30 facilities, public broadcasting, pollution control, solid waste  
31 disposal, federally qualified hazardous waste facilities, energy  
32 generating, conservation, or transmission facilities, sports  
33 facilities, industrial parks, and activities conducted within a  
34 federally designated enterprise or empowerment zone or geographic area  
35 of similar nature.

36 (6) "Eligible banking organization" means any organization subject

1 to regulation by the director of the department of financial  
2 institutions, any national bank, federal savings and loan association,  
3 and federal credit union located within this state.

4 (7) "Eligible export transaction" means any preexport or export  
5 activity by a person or entity located in the state of Washington  
6 involving a sale for export and product sale which, in the judgment of  
7 the authority:

8 (a) Will create or maintain employment in the state of Washington;

9 (b) Will obtain a material percent of its value from manufactured  
10 goods or services made, processed, or occurring in Washington; and

11 (c) Could not otherwise obtain financing on reasonable terms from  
12 an eligible banking organization.

13 (8) "Eligible person" means an individual, partnership,  
14 corporation, or joint venture carrying on business, or proposing to  
15 carry on business, within the state and seeking financial assistance  
16 under this act.

17 (9) "Financial assistance" means the infusion of capital to persons  
18 for use in the development and exploitation of specific inventions and  
19 products.

20 (10) "Financing agreements" means, and includes without limitation,  
21 a contractual arrangement with an eligible person whereby an authority  
22 obtains rights from or in an invention or product or proceeds from an  
23 invention or product in exchange for the granting of financial and  
24 other assistance to the person.

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

36 (12) "Municipality" means a city, town, county, or port district of  
37 this state.

1 (13) "Ordinance" means any appropriate method of taking official  
2 action or adopting a legislative decision by any municipality, whether  
3 known as a resolution, ordinance, or otherwise.

4 (14) "Plan" means the general plan of economic development finance  
5 objectives developed and adopted by the authority, and updated from  
6 time to time, as required under RCW 43.163.090.

7 (15) "Product" means a product, device, technique, or process that  
8 is or may be exploitable commercially. "Product" does not refer to  
9 pure research, but does apply to products, devices, techniques, or  
10 processes that have advanced beyond the theoretic stage and are readily  
11 capable of being, or have been, reduced to practice.

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

13 (a) Acquisition, lease, construction, reconstruction, remodeling,  
14 refurbishing, rehabilitation, extension, and enlargement of land,  
15 rights to land, buildings, structures, docks, wharves, fixtures,  
16 machinery, equipment, excavations, paving, landscaping, utilities,  
17 approaches, roadways and parking, handling and storage areas, and  
18 similar ancillary facilities, and any other real or personal property  
19 included in an economic development activity;

20 (b) Architectural, engineering, consulting, accounting, and legal  
21 costs related directly to the development, financing, acquisition,  
22 lease, construction, reconstruction, remodeling, refurbishing,  
23 rehabilitation, extension, and enlargement of an activity included  
24 under subsection (5) of this section, including costs of studies  
25 assessing the feasibility of an economic development activity;

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

29 (d) Start-up costs, working capital, capitalized research and  
30 development costs, capitalized interest during construction and during  
31 the eighteen months after estimated completion of construction, and  
32 capitalized debt service or repair and replacement or other appropriate  
33 reserves;

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

36 (f) Other costs incidental to any of the costs listed in this  
37 subsection.

1        NEW SECTION.    **Sec. 3.**    (1) A municipality may enact an ordinance  
2 creating an economic development finance authority for the purposes  
3 authorized in this chapter. The ordinance creating the authority must  
4 approve a charter for the authority containing such provisions as are  
5 authorized by and not in conflict with this chapter. Any charter  
6 issued under this chapter must contain in substance the limitations set  
7 forth in section 4 of this act. In any suit, action, or proceeding  
8 involving the validity or enforcement of or relating to any contract of  
9 the authority, the authority is conclusively presumed to be established  
10 and authorized to transact business and exercise its powers under this  
11 chapter upon proof of the adoption of the ordinance creating the  
12 authority by the governing body. A copy of the ordinance duly  
13 certified by the clerk of the governing body of the municipality is  
14 admissible in evidence in any suit, action, or proceeding.

15        (2) An authority created by a municipality pursuant to this chapter  
16 may be dissolved by the municipality if: (a) The authority has no  
17 property to administer, other than funds or property, if any, to be  
18 paid or transferred to the municipality by which it was established;  
19 and (b) all the authority's outstanding obligations have been  
20 satisfied. Such a dissolution must be accomplished by the governing  
21 body of the municipality adopting an ordinance providing for the  
22 dissolution.

23        (3) The creating municipality may, at its discretion and at any  
24 time, alter or change the structure, organizational programs, or  
25 activities of an authority, including termination of the authority if  
26 contracts entered into by the authority are not impaired. Any net  
27 earnings of an authority, beyond those necessary for retirement of  
28 indebtedness incurred by it, do not inure to the benefit of any person  
29 other than the creating municipality. Upon dissolution of an  
30 authority, title to all property owned by the authority vests in the  
31 municipality.

32        (4) The ordinance creating an authority must include provisions  
33 establishing a board of directors to govern the affairs of the  
34 authority, what constitutes a quorum of the board of directors, and how  
35 the authority must conduct its affairs.

36        (5) It is illegal for a director, officer, agent, or employee of an  
37 authority to have, directly or indirectly, any financial interest in  
38 any property to be included in or any contract for property, services,

1 or materials to be furnished or used in connection with any economic  
2 development activity financed through the authority. Violation of any  
3 provision of this section is a gross misdemeanor.

4 (6) The finances of any authority are subject to examination by the  
5 state auditor's office pursuant to RCW 43.09.260.

6 NEW SECTION. **Sec. 4.** No municipality may give or lend any money  
7 or property in aid of an authority. The municipality that creates an  
8 authority must annually review any financial statements of the  
9 authority and at all times must have access to the books and records of  
10 the authority. No authority may issue revenue obligations under this  
11 chapter except upon the approval of both the municipality under the  
12 auspices of which it was created and the county, city, or town within  
13 whose planning jurisdiction the economic development activity to be  
14 financed lies. An authority established under the terms of this  
15 chapter constitutes an authority and an instrumentality (within the  
16 meaning of those terms in the regulations of the United States treasury  
17 and the rulings of the internal revenue service prescribed pursuant to  
18 26 U.S.C. Sec. 103 of the federal internal revenue code of 1986, as  
19 amended) may act on behalf of the municipality under whose auspices it  
20 is created for the specific public purposes authorized by this chapter.  
21 The authority is not a municipal corporation within the meaning of the  
22 state Constitution and the laws of the state, or a political  
23 subdivision within the meaning of the state Constitution and the laws  
24 of the state, including without limitation, Article VIII, section 7 of  
25 the Washington state Constitution. A municipality may not delegate to  
26 an authority any of the municipality's attributes of sovereignty  
27 including, without limitation, the power to tax, the power of eminent  
28 domain, and the police power.

29 NEW SECTION. **Sec. 5.** (1) An authority established pursuant to  
30 this chapter may develop and conduct a program or programs to provide  
31 nonrecourse revenue bond financing for the project costs for economic  
32 development activities.

33 (2) An authority is authorized to participate fully in federal and  
34 other governmental economic development finance programs and to take  
35 such actions as are necessary and consistent with this chapter to  
36 secure the benefits of those programs and to meet their requirements.

1 (3) An authority is authorized to develop and operate, in  
2 cooperation with the small business export finance assistance center  
3 and other export assistance entities, a program or programs to provide  
4 for the funding of export transactions for small and medium-sized  
5 businesses which are unable to obtain funding from private commercial  
6 lenders.

7 (a) The authority is authorized to secure or provide guaranties or  
8 insurance for loans and otherwise to provide for loans for any eligible  
9 export transaction. Loans may be made either directly by the authority  
10 or through an eligible banking organization. For such purpose, the  
11 authority may use funds legally available to it to provide for  
12 insurance or to guarantee eligible export transactions for which  
13 guaranteed funding has been provided.

14 (b) The authority must make every effort to cause guaranties or  
15 insurance to be provided from the export-import bank of the United  
16 States, the foreign credit insurance association, the small business  
17 administration or such other similar or succeeding federal or private  
18 programs whose financial performance in the guarantee or insurance of  
19 export transactions is sound and recognized in the financial community.  
20 The maximum amount payable under any guaranty must be specifically set  
21 forth in writing at the time any such guaranteed funding is entered  
22 into by the authority.

23 (c) Prior to providing or securing a guarantee of funding or  
24 otherwise providing for a loan for any eligible export transaction  
25 hereunder, the authority must obtain assurance that there has been made  
26 an investigation of the credit of the exporter in order to determine  
27 its viability, the economic benefits to be derived from the eligible  
28 export transaction, the prospects for repayment, and such other facts  
29 as it deems necessary in order to determine that such guaranteed  
30 funding is consistent with the purposes of this chapter.

31 (4) An authority may develop and conduct a program that will  
32 stimulate and encourage the development of new products within  
33 Washington state by the infusion of financial aid for invention and  
34 innovation in situations in which the financial aid would not otherwise  
35 be reasonably available from commercial sources. The authority is  
36 authorized to provide nonrecourse revenue bond financing for this  
37 program.

1 (a) For the purposes of this program, the authority has the  
2 following powers and duties:

3 (i) To enter into financing agreements with eligible persons doing  
4 business in Washington state, upon terms and on conditions consistent  
5 with the purposes of this chapter, for the advancement of financial and  
6 other assistance to the persons for the development of specific  
7 products, procedures, and techniques, to be developed and produced in  
8 this state, and to condition the agreements upon contractual assurances  
9 that the benefits of increasing or maintaining employment and tax  
10 revenues remain in this state and accrue to it;

11 (ii) Own, possess, and take license in patents, copyrights, and  
12 proprietary processes and negotiate and enter into contracts and  
13 establish charges for the use of the patents, copyrights, and  
14 proprietary processes when the patents and licenses for products result  
15 from assistance provided by the authority;

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

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

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

25 (vi) Refer eligible persons to researchers or laboratories for the  
26 purpose of testing and evaluating new products, processes, or  
27 innovations; and

28 (vii) To the extent permitted under its contract with eligible  
29 persons, to consent to a termination, modification, forgiveness, or  
30 other change of a term of a contractual right, payment, royalty,  
31 contract, or agreement of any kind to which the authority is a party.

32 (b) Eligible persons seeking financial and other assistance under  
33 this program must forward an application, together with an application  
34 fee prescribed by rule, to the authority. An investigation and report  
35 concerning the advisability of approving an application for assistance  
36 must be completed by the staff of the authority. The investigation and  
37 report may include, but is not limited to, facts about the company  
38 under consideration as its history, wage standards, job opportunities,



1 stability of employment, past and present financial condition and  
2 structure, pro forma income statements, present and future markets and  
3 prospects, integrity of management as well as the feasibility of the  
4 proposed product and invention to be granted financial assistance,  
5 including the state of development of the product as well as the  
6 likelihood of its commercial feasibility. After receipt and  
7 consideration of the report set out in this subsection and after other  
8 action as is deemed appropriate, the application must be approved or  
9 denied by the authority. The applicant must be promptly notified of  
10 action by the authority.

11 (5) An authority is authorized to develop and conduct a program or  
12 programs to provide advance financing to eligible farmers in respect of  
13 the contract payments due to them under the federal department of  
14 agriculture conservation reserve program. Such advance financing may  
15 be provided in the form of lease, sale, loan, or other similar  
16 financing transactions.

17 (6) An authority is authorized to develop and conduct a program or  
18 programs to promote small business and agricultural financing in the  
19 state through the pooling of loans or portions of loans made or  
20 guaranteed through programs administered by federal agencies including  
21 the small business or farmers home administrations. For such purpose,  
22 the authority may acquire from eligible banking organizations and other  
23 financial intermediaries who make or hold loans made or guaranteed  
24 through programs administered by the federal small business or farmers  
25 home administrations all or portions of such loans, and the authority  
26 may contract or coordinate with parties authorized to acquire or pool  
27 loans made or guaranteed by a federal agency or with parties authorized  
28 to administer such loan or guarantee programs.

29 (7) An authority must coordinate its programs with those of the  
30 Washington economic development finance authority and those  
31 contributing to a common purpose found elsewhere in the departments of  
32 commerce, agriculture, or employment security, or any other department  
33 or organization of, or affiliated with, the state or federal  
34 government, and must avoid any duplication of such activities or  
35 programs provided elsewhere.

36 (8) An authority may receive no appropriation of state funds. The  
37 department of commerce and the Washington economic development finance

1 authority may assist a local economic development finance authority in  
2 organizing itself and in designing programs.

3 (9) The departments of commerce, agriculture, and employment  
4 security and other relevant state agencies must provide to any  
5 authority established pursuant to this chapter all reports prepared in  
6 the course of their ongoing activities which may assist in the  
7 identification of unmet capital financing needs by small-sized and  
8 medium-sized businesses in the state.

9 (10) An authority may use any funds legally available to it for any  
10 purpose specifically authorized by this chapter, or for otherwise  
11 improving economic development by assisting businesses and farm  
12 enterprises that do not have access to capital at terms and rates  
13 comparable to large corporations due to the location of the business,  
14 the size of the business, the lack of financial expertise, or other  
15 appropriate reasons.

16 NEW SECTION. **Sec. 6.** (1) An authority established pursuant to  
17 this chapter must adopt general operating procedures for the authority.  
18 The authority must also adopt operating procedures for individual  
19 programs as they are developed for obtaining funds and for providing  
20 funds to borrowers. These operating procedures must be adopted by  
21 resolution prior to the authority operating the applicable programs.

22 (2) The operating procedures must include, but are not limited to:

23 (a) Appropriate minimum reserve requirements to secure the  
24 authority's bonds and other obligations;

25 (b) Appropriate standards for securing loans and other financing  
26 the authority provides to borrowers, such as guarantees or collateral;  
27 and

28 (c) Strict standards for providing financing to borrowers, such as:

29 (i) The borrower is a responsible party with a high probability of  
30 being able to repay the financing provided by the authority;

31 (ii) The financing is reasonably expected to provide economic  
32 growth or stability in the state by enabling a borrower to increase or  
33 maintain jobs or capital in the state;

34 (iii) The borrowers with the greatest needs or that provide the  
35 most public benefit are given higher priority by the authority; and

36 (iv) The financing is consistent with any plan adopted by the  
37 authority under the provisions of section 7 of this act.

1        NEW SECTION.    **Sec. 7.**    (1) Any authority established pursuant to  
2 this chapter must adopt a general plan of economic development finance  
3 objectives to be implemented by the authority during the period of the  
4 plan. The authority may exercise the powers authorized under this  
5 chapter prior to the adoption of the initial plan. In developing the  
6 plan, the authority must consider and set objectives for:

7        (a) Employment generation associated with the authority's programs;

8        (b) The application of funds to economic sectors and economic  
9 development activity evidencing need for improved access to capital  
10 markets and funding resources;

11        (c) Eligibility criteria for participants in authority programs;

12        (d) The use of funds and resources available from or through  
13 federal, state, local, and private sources and programs;

14        (e) New programs which serve a targeted need for financing  
15 assistance within the purposes of this chapter; and

16        (f) Opportunities to improve capital access as evidenced by  
17 programs existent in other localities or as they are made possible by  
18 results of private capital market circumstances.

19        (2) Upon adoption of the general plan the authority must conduct  
20 its programs in observance of the objectives established in the plan.  
21 The authority may periodically update the plan as determined necessary  
22 by the authority.

23        NEW SECTION.    **Sec. 8.**    In addition to carrying out the economic  
24 development finance activities and programs specifically authorized in  
25 this chapter, an authority may:

26        (1) Maintain an office or offices;

27        (2) Sue and be sued in its own name, and plead and be impleaded;

28        (3) Engage consultants, agents, attorneys, and advisers, contract  
29 with federal, state, and local governmental entities for services, and  
30 hire such employees, agents, and other personnel as the authority deems  
31 necessary, useful, or convenient to accomplish its purposes;

32        (4) Make and execute all manner of contracts, agreements and  
33 instruments, and financing documents with public and private parties as  
34 the authority deems necessary, useful, or convenient to accomplish its  
35 purposes;

36        (5) Acquire and hold real or personal property, or any interest  
37 therein, in the name of the authority, and to sell, assign, lease,

1   encumber, mortgage, or otherwise dispose of the same in such manner as  
2   the authority deems necessary, useful, or convenient to accomplish its  
3   purposes;

4       (6) Open and maintain accounts in qualified public depositaries and  
5   otherwise provide for the investment of any funds not required for  
6   immediate disbursement, and provide for the selection of investments;

7       (7) Appear in its own behalf before boards, commissions,  
8   departments, or agencies of federal, state, or local government;

9       (8) Procure such insurance in such amounts and from such insurers  
10  as the authority deems desirable including, but not limited to,  
11  insurance against any loss or damage to its property or other assets,  
12  public liability insurance for injuries to persons or property, and  
13  directors and officers liability insurance;

14      (9) Apply for and accept subventions, grants, loans, advances, and  
15  contributions from any source of money, property, labor, or other  
16  things of value, to be held, used, and applied as the authority deems  
17  necessary, useful, or convenient to accomplish its purposes;

18      (10) Establish guidelines for the participation by eligible banking  
19  organizations in programs conducted by the authority under this  
20  chapter;

21      (11) Act as an agent, by agreement, for federal, state, or local  
22  governmental entities to carry out the programs authorized in this  
23  chapter;

24      (12) Establish, revise, and collect such fees and charges as the  
25  authority deems necessary, useful, or convenient to accomplish its  
26  purposes;

27      (13) Make such expenditures as are appropriate for paying the  
28  administrative costs and expenses of the authority in carrying out the  
29  provisions of this chapter;

30      (14) Establish such reserves and special funds, and controls on  
31  deposits to and disbursements from them, as the authority deems  
32  necessary, useful, or convenient to accomplish its purposes;

33      (15) Prepare, publish, and distribute, with or without charge, such  
34  studies, reports, bulletins, and other material as the authority deems  
35  necessary, useful, or convenient to accomplish its purposes;

36      (16) Delegate any of its powers and duties if consistent with the  
37  purposes of this chapter;

1 (17) Adopt rules concerning its exercise of the powers authorized  
2 by this chapter; and

3 (18) Exercise any other power the authority deems necessary,  
4 useful, or convenient to accomplish its purposes and exercise the  
5 powers expressly granted in this chapter.

6 NEW SECTION. **Sec. 9.** Notwithstanding any other provision of this  
7 chapter, an authority may not:

8 (1) Give any state money or property or loan any state money or  
9 credit to or in aid of any individual, association, company, or  
10 corporation, or become directly or indirectly the owner of any stock in  
11 or bonds of any association, company, or corporation;

12 (2) Issue bills of credit or accept deposits of money for time or  
13 demand deposit, administer trusts, engage in any form or manner in, or  
14 in the conduct of, any private or commercial banking business, or act  
15 as a savings bank or savings and loan association other than as  
16 provided in this chapter;

17 (3) Be or constitute a bank or trust company within the  
18 jurisdiction or under the control of the director of financial  
19 institutions, the comptroller of the currency of the United States of  
20 America, or the treasury department thereof;

21 (4) Be or constitute a bank, broker, or dealer in securities within  
22 the meaning of, or subject to the provisions of, any securities,  
23 securities exchange, or securities dealers' law of the United States of  
24 America or the state;

25 (5) Engage in the financing of housing as provided for in chapter  
26 43.180 RCW;

27 (6) Engage in the financing of health care facilities as provided  
28 for in chapter 70.37 RCW; or

29 (7) Engage in financing higher education facilities as provided for  
30 in chapter 28B.07 RCW.

31 NEW SECTION. **Sec. 10.** (1) An authority may issue its nonrecourse  
32 revenue bonds in order to obtain the funds to carry out the programs  
33 authorized in this chapter. The bonds must be special obligations of  
34 the authority, payable solely out of the special fund or funds  
35 established by the authority for their repayment.

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

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

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

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

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

37 (4) Any security interest created against the unexpended bond  
38 proceeds and against the special funds created by the authority is

1 immediately valid and binding against the money and any securities in  
2 which the money may be invested without authority or trustee  
3 possession. The security interest must be prior to any party having  
4 any competing claim against the moneys or securities, without filing or  
5 recording under Article 9A of the uniform commercial code, Title 62A  
6 RCW, and regardless of whether the party has notice of the security  
7 interest.

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

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

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

35 (8) Neither the board of directors of the authority, nor its  
36 employees or agents, nor any person executing the bonds is personally  
37 liable on the bonds or subject to any personal liability or  
38 accountability by reason of the issuance of the bonds.

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

5 (10) The state finance committee must be notified in advance of the  
6 issuance of bonds by the authority in order to promote the orderly.

7 NEW SECTION. **Sec. 11.** (1) Bonds issued by an authority  
8 established under this chapter are not considered to constitute a debt  
9 of the state, of the municipality, or of any other municipal  
10 corporation, quasi-municipal corporation, subdivision, or agency of  
11 this state or to pledge any or all of the faith and credit of any of  
12 these entities. The revenue bonds are payable solely from both the  
13 revenues derived as a result of the economic development activities  
14 funded by the revenue bonds including, without limitation, amounts  
15 received under the terms of any financing document or by reason of any  
16 additional security furnished by beneficiaries of the economic  
17 development activity in connection with the financing thereof, and  
18 money and other property received from private sources. The issuance  
19 of bonds under this chapter do not obligate, directly, indirectly, or  
20 contingently, the state or any political subdivision of the state to  
21 levy any taxes or appropriate or expend any funds for the payment of  
22 the principal or the interest on the bonds. Each revenue bond must  
23 contain on its face, and any disclosure document prepared in  
24 conjunction with the offer and sale of bonds must include, statements  
25 to the effect that:

26 (a) Neither the state, the municipality, or any other municipal  
27 corporation, quasi-municipal corporation, subdivision, or agency of the  
28 state is obligated to pay the principal or the interest thereon;

29 (b) No tax funds or governmental revenue may be used to pay the  
30 principal or interest thereon; and

31 (c) Neither any or all of the faith and credit nor the taxing power  
32 of the state, the municipality, or any other municipal corporation,  
33 quasi-municipal corporation, subdivision, or agency thereof is pledged  
34 to the payment of the principal of or the interest on the revenue bond.

35 (2) Neither the proceeds of bonds issued under this chapter nor any  
36 money used or to be used to pay the principal of, premium, if any, or  
37 interest on the bonds constitute public money or property. All of such



1 money must be kept segregated and set apart from funds of the state and  
2 any political subdivision of the state and are not subject to  
3 appropriation or allotment by the state or subject to the provisions of  
4 chapter 43.88 RCW.

5 (3) Contracts entered into by an authority must be entered into in  
6 the name of the authority and not in the name of the state or any  
7 political subdivision of the state. The obligations of the authority  
8 under such contracts are obligations only of the authority and are not,  
9 in any way, obligations of the state. An authority may incur only  
10 those financial obligations which will be paid from revenues received  
11 pursuant to financing documents, from fees or charges paid by  
12 beneficiaries of the economic development activities funded by the  
13 revenue bonds, or from the proceeds of revenue bonds.

14 NEW SECTION. **Sec. 12.** (1)(a) An authority may enter into  
15 financing documents with borrowers regarding bonds issued by the  
16 authority that may provide for the payment by each borrower of amounts  
17 sufficient, together with other revenues available to the authority, if  
18 any, to:

19 (i) Pay the borrower's share of the fees established by the  
20 authority;

21 (ii) Pay the principal of, premium, if any, and interest on  
22 outstanding bonds of the authority issued in respect of such borrower  
23 as the same become due and payable; and

24 (iii) Create and maintain reserves required or provided for by the  
25 authority in connection with the issuance of such bonds.

26 (b) The payments are not subject to supervision or regulation by  
27 any department, committee, board, body, bureau, or agency of the state  
28 other than the authority.

29 (2) All money received by or on behalf of the authority with  
30 respect to this issuance of its bonds must be trust funds to be held  
31 and applied solely as provided in this chapter. The authority, in lieu  
32 of receiving and applying the moneys itself, may enter into trust  
33 agreement or indenture with one or more banks or trust companies having  
34 the power and authority to conduct trust business in the state to:

35 (a) Perform all or any part of the obligations of the authority  
36 with respect to:

37 (i) Bonds issued by it;

1 (ii) The receipt, investment, and application of the proceeds of  
2 the bonds and money paid by a participant or available from other  
3 sources for the payment of the bonds;

4 (iii) The enforcement of the obligations of a borrower in  
5 connection with the financing or refinancing of any project; and

6 (iv) Other matters relating to the exercise of the authority's  
7 powers under this chapter;

8 (b) Receive, hold, preserve, and enforce any security interest or  
9 evidence of security interest granted by a participant for purposes of  
10 securing the payment of the bonds; and

11 (c) Act on behalf of the authority or the owners of bonds of the  
12 authority for purposes of assuring or enforcing the payment of the  
13 bonds, when due.

14 NEW SECTION. **Sec. 13.** (1) Any owner of bonds issued under this  
15 chapter by any authority, and the trustee under any trust agreement or  
16 indenture, may, either at law or in equity, by suit, action, mandamus,  
17 or other proceeding, protect and enforce any of their respective  
18 rights, and may become the purchaser at any foreclosure sale if the  
19 person is the highest bidder, except to the extent the rights given are  
20 restricted by the authority in any bond resolution or trust agreement  
21 or indenture authorizing the issuance of the bonds.

22 (2) The bonds of an authority are securities in which all public  
23 officers and bodies of this state and all counties, cities, municipal  
24 corporations, and political subdivisions, all banks, eligible banking  
25 organizations, bankers, trust companies, savings banks and  
26 institutions, building and loan associations, savings and loan  
27 associations, investment companies, insurance companies and  
28 associations, and all executors, administrators, guardians, trustees,  
29 and other fiduciaries may legally invest any sinking funds, moneys, or  
30 other funds belonging to them or within their control.

31 NEW SECTION. **Sec. 14.** This chapter provides a complete,  
32 additional, and alternative method for accomplishing the purposes of  
33 this chapter and must be regarded as supplemental and additional to  
34 powers conferred by other laws. The issuance of bonds and refunding  
35 bonds under this chapter need not comply with the requirements of any  
36 other law applicable to the issuance of bonds.

1        NEW SECTION.    **Sec. 15.**    Insofar as the provisions of this chapter  
2 are inconsistent with the provisions of any general or special law, or  
3 parts thereof, the provisions of this chapter are controlling.

4        **Sec. 16.**    RCW 43.163.060 and 1995 c 399 s 90 are each amended to  
5 read as follows:

6        (1) The authority is authorized to participate fully in federal and  
7 other governmental economic development finance programs and to take  
8 such actions as are necessary and consistent with this chapter to  
9 secure to itself and the people of the state the benefits of those  
10 programs and to meet their requirements.

11       (2) The authority (~~shall~~) must coordinate its programs with those  
12 of local economic development finance authorities authorized under  
13 section 3 of this act and those contributing to a common purpose found  
14 elsewhere in the departments of (~~community, trade, and economic~~  
15 ~~development~~) commerce, agriculture, or employment security, or any  
16 other department or organization of, or affiliated with, the state or  
17 federal government, and shall avoid any duplication of such activities  
18 or programs provided elsewhere. The departments of (~~community, trade,~~  
19 ~~and economic development~~) commerce, agriculture, and employment  
20 security and other relevant state agencies shall provide to the  
21 authority all reports prepared in the course of their ongoing  
22 activities which may assist in the identification of unmet capital  
23 financing needs by small-sized and medium-sized businesses in the  
24 state.

25       NEW SECTION.    **Sec. 17.**    Sections 1 through 15 of this act  
26 constitute a new chapter in Title 39 RCW.

27       NEW SECTION.    **Sec. 18.**    If any provision of this act or its  
28 application to any person or circumstance is held invalid, the  
29 remainder of the act or the application of the provision to other  
30 persons or circumstances is not affected.

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