
SUBSTITUTE SENATE BILL 5837

State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Government Operations (originally sponsored by Senators Quigley, Moore, Pelz, A. Smith, Prentice, Bauer, Hargrove, Sheldon, Erwin, Niemi, Jesernig and Talmadge)

Read first time 03/03/93.

1 AN ACT Relating to state and local government finance; adding a new
2 chapter to Title 39 RCW; and providing an expiration date.

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

4 NEW SECTION. **Sec. 1.** LEGISLATIVE FINDINGS AND DECLARATIONS. The
5 legislature finds and declares that the issuance by state and local
6 governments of bonds and other obligations, and the investment of
7 moneys in connection with these obligations, involve exposure to
8 changes in interest rates; that a number of financial instruments are
9 available to lower the net cost of these borrowings, to increase the
10 net return on these investments, or to reduce the exposure of state and
11 local governments to changes in interest rates; that these reduced
12 costs and increased returns for state and local governments will
13 benefit taxpayers and ratepayers; and that the legislature desires to
14 provide state and local governments with express statutory authority to
15 take advantage of these instruments. In recognition of the complexity
16 of these financial instruments, the legislature desires that this
17 authority be subject to certain limitations, and be granted for an
18 initial period of two years.

1 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly
2 requires otherwise, the definitions in this section apply throughout
3 this chapter:

4 (1) "Financial advisor" means a financial services or financial
5 advisory firm:

6 (a) With recognized knowledge and experience in connection with the
7 negotiation and execution of payment agreements;

8 (b) That is acting solely as financial advisor to the governmental
9 entity in connection with the execution of the payment agreement and
10 the issuance or incurring of any related obligations, and not as a
11 principal, placement agent, purchaser, underwriter, or other similar
12 party, and that does not control, nor is it controlled by or under
13 common control with, any such party;

14 (c) That is compensated for its services in connection with the
15 execution of payment agreements, either directly or indirectly, solely
16 by the governmental entity; and

17 (d) Whose compensation is not based on a percentage of the notional
18 amount of the payment agreement or of the principal amount of any
19 related obligations.

20 (2) "Governmental entity" means state government or local
21 government.

22 (3) "Local government" means any city, county, port district, or
23 public utility district, or any joint operating agency formed under RCW
24 43.52.360, that has or will have outstanding obligations in an
25 aggregate principal amount of at least one hundred million dollars as
26 of the date a payment agreement is executed or is scheduled by its
27 terms to commence.

28 (4) "Obligations" means bonds, notes, bond anticipation notes,
29 commercial paper, or other obligations for borrowed money, or lease,
30 installment purchase, or other similar financing agreements or
31 certificates of participation in such agreements.

32 (5) "Payment agreement" means a written agreement which provides
33 for an exchange of payments based on interest rates, or for ceilings or
34 floors on these payments, or an option on these payments, or any
35 combination, entered into on either a current or forward basis.

36 (6) "State government" means (a) the state of Washington, acting by
37 and through its state finance committee, (b) the Washington health care
38 facilities authority, (c) the Washington higher education facilities
39 authority, (d) the Washington state housing finance commission, or (e)

1 the state finance committee upon adoption of a resolution approving a
2 payment agreement on behalf of any state institution of higher
3 education as defined under RCW 28B.10.016: PROVIDED, That such
4 approval shall not constitute the pledge of the full faith and credit
5 of the state, but a pledge of only those funds specified in the
6 approved agreement.

7 NEW SECTION. **Sec. 3.** AUTHORITY TO ENTER INTO PAYMENT AGREEMENTS.

8 (1) Subject to subsections (2) and (3) of this section, any
9 governmental entity may enter into a payment agreement in connection
10 with, or incidental to, the issuance, incurring, or carrying of
11 specific obligations, for the purpose of managing or reducing the
12 governmental entity's exposure to fluctuations or levels of interest
13 rates. No governmental entity may carry on a business of acting as a
14 dealer in payment agreements.

15 (2) No governmental entity may enter into a payment agreement under
16 this chapter unless it first:

17 (a) Finds and determines, by ordinance or resolution, that the
18 payment agreement, if fully performed by all parties thereto, will (i)
19 reduce the amount or duration of its exposure to changes in interest
20 rates; or (ii) result in a lower net cost of borrowing with respect to
21 the related obligations, or a higher net rate of return on investments
22 made in connection with, or incidental to, the issuance, incurring, or
23 carrying of those obligations;

24 (b) Obtains, on or prior to the date of execution of the payment
25 agreement, a written certification from a financial advisor that (i)
26 the terms and conditions of the payment agreement and any ancillary
27 agreements, including without limitation, the interest rate or rates
28 and any other amounts payable thereunder, are commercially reasonable
29 in light of then existing market conditions; and (ii) the finding and
30 determination contained in the ordinance or resolution required by (a)
31 of this subsection is reasonable.

32 (3) Prior to selecting the other party to a payment agreement, a
33 governmental entity shall solicit and give due consideration to
34 proposals from at least two entities that meet the criteria set forth
35 in section 4(2) of this act. Such solicitation and consideration shall
36 be conducted in such manner as the governmental entity shall determine
37 is reasonable.

1 NEW SECTION. **Sec. 4.** PAYMENT AGREEMENTS--TERMS. (1) Subject to
2 subsections (2), (3), and (4) of this section, payment agreements
3 entered into by any governmental entity may include those payment,
4 term, security, default, remedy, termination, and other terms and
5 conditions, and may be with those parties, as the governmental entity
6 deems reasonably necessary or desirable.

7 (2) No governmental entity may enter into a payment agreement under
8 this chapter unless:

9 (a) The other party to the agreement has a rating from at least two
10 nationally recognized credit rating agencies, as of the date of
11 execution of the agreement, that is within the two highest long-term
12 investment grade rating categories, without regard to subcategories, or
13 the payment obligations of the party under the agreement are
14 unconditionally guaranteed by an entity that then has the required
15 ratings; or

16 (b)(i) The other party to the agreement has a rating from at least
17 two nationally recognized credit rating agencies, as of the date of
18 execution of the agreement, that is within the three highest long-term
19 investment grade rating categories, without regard to subcategories, or
20 the payment obligations of the party under the agreement are
21 unconditionally guaranteed by an entity that has the required ratings;
22 and

23 (ii) The payment obligations of the other party under the agreement
24 are collateralized by direct obligations of, or obligations the
25 principal and interest on which are guaranteed by, the United States of
26 America, that (A) are deposited with the governmental entity or an
27 agent of the governmental entity; and (B) maintain a market value of
28 not less than one hundred two percent of the net market value of the
29 payment agreement to the governmental entity, as such net market value
30 may be defined and determined from time to time under the terms of the
31 payment agreement.

32 (3) No governmental entity may enter into a payment agreement with
33 a party who qualifies under subsection (2)(a) of this section unless
34 the payment agreement provides that, in the event the credit rating of
35 the other party or its guarantor falls below the level required by
36 subsection (2)(a) of this section, such party will comply with the
37 collateralization requirements contained in subsection (2)(b) of this
38 section.

1 (4) No governmental entity may enter into a payment agreement
2 unless:

3 (a) The notional amount of the payment agreement does not exceed
4 the principal amount of the obligations with respect to which the
5 payment agreement is made; and

6 (b) The term of the payment agreement does not exceed the final
7 term of the obligations with respect to which the payment agreement is
8 made.

9 NEW SECTION. **Sec. 5.** PAYMENT AGREEMENTS--PAYMENTS--CREDIT
10 ENHANCEMENTS. (1) Subject to any covenants or agreements applicable to
11 the obligations issued or incurred by the governmental entity, any
12 payments required to be made by the governmental entity under a payment
13 agreement entered into in connection with the issuance, incurring, or
14 carrying of those obligations may be made from money set aside or
15 pledged to pay or secure the payment of those obligations or from any
16 other legally available source.

17 (2) Any governmental entity may enter into credit enhancement,
18 liquidity, line of credit, or other similar agreements in connection
19 with, or incidental to, the execution of a payment agreement. The
20 credit enhancement, liquidity, line of credit, or other similar
21 agreement may include those payment, term, security, default, remedy,
22 termination, and other terms and conditions, and may be with those
23 parties, as the governmental entity deems reasonably necessary or
24 desirable.

25 NEW SECTION. **Sec. 6.** CALCULATIONS REGARDING PAYMENT OF
26 OBLIGATIONS--STATUS OF PAYMENTS. (1) Subject to any covenants or
27 agreements applicable to the obligations issued or incurred by the
28 governmental entity, if the governmental entity enters into a payment
29 agreement with respect to those obligations, then it may elect to treat
30 the amounts payable from time to time with respect to those obligations
31 as the amounts payable after giving effect to the payment agreement for
32 the purposes of calculating:

33 (a) Rates and charges to be imposed by a revenue-producing
34 enterprise if the revenues are pledged or used to pay those
35 obligations;

36 (b) Any taxes to be levied and collected to pay those obligation;
37 and

1 (c) Payments or debt service on those obligations for any other
2 purpose.

3 (2) A payment agreement and any obligation of the governmental
4 entity to make payments under the agreement in future fiscal years
5 shall not constitute debt or indebtedness of the governmental entity
6 for purposes of state constitutional and statutory debt limitation
7 provisions if the obligation to make any payments is contingent upon
8 the performance of the other party or parties to the agreement, and no
9 moneys are paid to the governmental entity under the payment agreement
10 that must be repaid in future fiscal years.

11 NEW SECTION. **Sec. 7.** EXPIRATION DATE--VALIDITY OF CONTRACTS. (1)
12 Except as provided in subsection (3) of this section, no governmental
13 entity may enter a payment agreement under section 3 of this act after
14 June 30, 1995.

15 (2) The termination of authority to enter payment agreements after
16 June 30, 1995, shall not affect the validity of any payment agreements
17 or other contracts entered into under section 3 of this act on or
18 before that date.

19 (3) A governmental entity may enter into a payment agreement under
20 and in accordance with this chapter after June 30, 1995, to replace a
21 payment agreement that relates to specified obligations issued on or
22 before that date and that has terminated before the final term of those
23 obligations.

24 NEW SECTION. **Sec. 8.** AUTHORITY CUMULATIVE. The powers conferred
25 by this chapter are in addition to, and not in substitution for, the
26 powers conferred by any existing law, and the limitations imposed by
27 this chapter do not directly or indirectly modify, limit, or affect the
28 powers conferred by any existing law.

29 NEW SECTION. **Sec. 9.** LIBERAL CONSTRUCTION. This chapter shall be
30 liberally construed to effect its purposes.

31 NEW SECTION. **Sec. 10.** CAPTIONS. Captions used in this chapter do
32 not constitute any part of the law.

33 NEW SECTION. **Sec. 11.** SEVERABILITY. If any provision of this act
34 or its application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 12.** LEGISLATIVE DIRECTIVE. Sections 1 through
4 11 of this act shall constitute a new chapter in Title 39 RCW.

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