
ENGROSSED SENATE BILL 5385

State of Washington

60th Legislature

2007 Regular Session

By Senators Shin, Jacobsen, Schoesler, Rockefeller, Delvin, Tom and Kohl-Welles; by request of Washington State Higher Education Facilities Authority

Read first time 01/18/2007. Referred to Committee on Higher Education.

1 AN ACT Relating to authorizing the Washington higher education
2 facilities authority to originate and purchase educational loans and to
3 issue student loan revenue bonds; amending RCW 28B.07.030; adding new
4 sections to chapter 28B.07 RCW; and creating new sections.

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

6 NEW SECTION. **Sec. 1.** LEGISLATIVE DECLARATION. It is the public
7 policy of the state and a recognized governmental function to
8 facilitate student loan financing and thereby increase access to higher
9 education for Washington's citizens. The purpose of this act is to
10 bring to the citizens of the state the applicable advantages of federal
11 tax law and federal loan guaranties and to authorize the Washington
12 higher education facilities authority to originate and acquire
13 educational loans and to issue nonrecourse revenue bonds to be paid
14 from such loans.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 28B.07 RCW
16 to read as follows:

17 DEFINITIONS. The definitions in this section apply throughout this
18 chapter unless the context clearly requires otherwise.

1 (1) "Authority" means the Washington higher education facilities
2 authority established pursuant to RCW 28B.07.030 or any board, body,
3 commission, department, or officer succeeding to the principal
4 functions of the authority or to whom the powers conferred upon the
5 authority shall be given by law.

6 (2) "Educational loans" means:

7 (a) Guaranteed federal educational loans made in accordance with
8 Title IV, Part B, of the higher education act of 1965, or its
9 successor, to a qualified borrower for payment of educational expenses
10 incurred by a student while attending a participating institution, the
11 payment of principal of and interest on which is insured by the United
12 States secretary of education under the higher education act of 1965,
13 or its successor; and

14 (b) Alternative state educational loans made in accordance with
15 this act to a qualified borrower as determined by the authority for
16 payment of educational expenses incurred by a student while attending
17 a participating institution under the terms and conditions determined
18 by the authority.

19 (3) "Obligation," "bond," or "bonds" means bonds, notes, commercial
20 paper, certificates of indebtedness, or other evidences of indebtedness
21 of the authority issued under this act, whether or not the interest on
22 the obligation is subject to federal income taxation.

23 (4) "Participating institution" means any post high school
24 educational institution, public or private, whose students are eligible
25 for educational loans.

26 (5) "Qualified borrower" means a student, or the parent of a
27 student, who: (a) Qualifies for an educational loan; and (b) is a
28 resident of the state of Washington or has been accepted for enrollment
29 at or is attending a participating institution within the state of
30 Washington.

31 NEW SECTION. **Sec. 3.** A new section is added to chapter 28B.07 RCW
32 to read as follows:

33 STUDENT LOAN AUTHORITY. (1) In addition to its existing powers,
34 the authority has the following powers with respect to student loan
35 financing:

36 (a) To originate and purchase educational loans;

1 (b) To issue revenue bonds payable from and secured by educational
2 loans;

3 (c) To execute financing documents in connection with such
4 educational loans and bonds;

5 (d) To adopt rules in accordance with chapter 34.05 RCW;

6 (e) To participate fully in federal programs that provide
7 guaranties for the repayment of educational loans and do all things
8 necessary, useful, or convenient to make such programs available in the
9 state and carry out the purposes of this act;

10 (f) To contract with an agency, financial institution, or
11 corporation, whether organized under the laws of this state or
12 otherwise, whereby such agency, financial institution, or corporation
13 shall provide billing, accounting, reporting, or administrative
14 services required for educational loan programs administered by the
15 authority or in which the authority participates; and

16 (g) To form one or more nonprofit special purpose corporations for
17 accomplishing the purposes set forth in this act. The authority may
18 contract with any such nonprofit corporation, as set forth in (f) of
19 this subsection.

20 (2) In the exercise of any of these powers, the authority shall
21 incur no expense or liability that shall be an obligation, either
22 general or special, of the state, and shall pay no expense or liability
23 from funds other than funds of the authority. Funds of the state may
24 not be used for such purpose unless appropriated for such purpose.

25 NEW SECTION. **Sec. 4.** A new section is added to chapter 28B.07 RCW
26 to read as follows:

27 ALTERNATIVE STATE EDUCATIONAL LOANS. The authority, in addition to
28 administering federal loan programs, may administer an alternative
29 state educational loan program that may include the purchase or
30 origination of alternative state educational loans with terms as
31 determined by the authority. These loans are not guaranteed by the
32 state and the proceeds from loan repayment including interest or other
33 loan-related payments or authority or contractor revenue may be used by
34 the authority to make any required payments to bondholders.

35 NEW SECTION. **Sec. 5.** A new section is added to chapter 28B.07 RCW
36 to read as follows:

1 REVENUE BONDS. (1) The authority may, from time to time, issue
2 revenue bonds in order to carry out the purposes of this act.

3 (2) The bonds shall be issued pursuant to a bond resolution or
4 trust indenture and shall be payable solely out of the special fund or
5 funds created by the authority in the bond resolution or trust
6 indenture. Any security interest created against the unexpended bond
7 proceeds and against the special funds created by the authority shall
8 be immediately valid and binding against the moneys and any securities
9 in which the moneys may be invested without authority or trustee
10 possession, and the security interest shall be prior to any party
11 having any competing claim against the moneys or securities, without
12 filing or recording under Article 62A.9A of the uniform commercial
13 code, and regardless of whether the party has notice of the security
14 interest.

15 (3) The obligations shall be payable from and secured by a pledge
16 of revenues derived from or by reason of ownership of guaranteed
17 educational loans and investment income, after deduction of expenses of
18 operating the authority's program.

19 (4) The bonds may be issued as serial bonds or as term bonds or any
20 such combination. The bonds shall bear such date or dates; mature at
21 such time or times; bear interest at such rate or rates, either fixed
22 or variable; be payable at such time or times; be in such
23 denominations; be in such form; carry such registration privileges; be
24 made transferable, exchangeable, and interchangeable; be payable in
25 lawful money of the United States of America at such place or places;
26 be subject to such terms of redemption; and be sold at public or
27 private sale, in such manner, at such time, and at such price as the
28 authority shall determine. The bonds shall be executed by the manual
29 or facsimile signatures of the chairperson and the authority's duly
30 elected secretary or its executive director, and by the trustee if the
31 authority determines to use a trustee. At least one signature shall be
32 manually subscribed.

33 (5) Any bond resolution, trust indenture, or other financing
34 document may contain provisions, which may be made a part of the
35 contract with the holders or owners of the bonds to be issued,
36 pertaining to the following, among other matters: (a) The security
37 interests granted to the holders or owners of the bonds to secure
38 repayment of the bonds; (b) the segregation of reserves or sinking

1 funds, and the regulation, investment, and disposition thereof; (c)
2 limitations on the purposes to which, or the investments in which, the
3 proceeds of the sale of any issue of bonds may be applied; (d) terms
4 pertaining to the issuance of additional parity bonds; (e) the
5 refunding of outstanding bonds; (f) procedures, if any, by which the
6 terms of any contract with bondholders may be amended or abrogated; (g)
7 events of default as well as rights and remedies in the event of a
8 default including without limitation the right to declare all principal
9 and interest immediately due and payable; (h) terms governing
10 performance by the trustee of its obligation; or (i) such other
11 additional covenants, agreements, and provisions as are deemed
12 necessary, useful, or convenient by the authority for the security of
13 the holders of the bonds.

14 (6) All bonds and any interest coupons appertaining to the bonds
15 shall be negotiable instruments under Title 62A RCW.

16 (7) Neither the members of the authority, nor its employees or
17 agents, nor any person executing the bonds shall be liable personally
18 on the bonds or be subject to any personal liability or accountability
19 by reason of the issuance of the bonds.

20 (8) The authority may purchase its bonds with any of its funds
21 available for the purchase. The authority may hold, pledge, cancel, or
22 resell the bonds subject to and in accordance with agreements with
23 bondholders.

24 (9) Bonds issued under this act shall not be deemed to constitute
25 obligations, either general or special, of the state or of any
26 political subdivision of the state, or a pledge of the faith and credit
27 of the state or of any political subdivision, or a general obligation
28 of the authority. The bonds shall be special obligations of the
29 authority and shall be payable solely from the special fund or funds
30 created by the authority in the bond resolution or trust indenture
31 pursuant to which the bonds were issued. The issuance of bonds under
32 this act shall not obligate, directly, indirectly, or contingently, the
33 state or any political subdivision of the state to levy any taxes or
34 appropriate or expend any funds for the payment of the principal or the
35 interest on the bonds.

36 (10) Neither the proceeds of bonds issued under this act, any
37 moneys used or to be used to pay the principal of or interest on the
38 bonds, nor any moneys received by the authority to defray its

1 administrative costs shall constitute public money or property. All of
2 such moneys shall be kept segregated and set apart from funds of the
3 state and any political subdivision of the state and shall not be
4 subject to appropriation or allotment by the state or subject to the
5 provisions of chapter 43.88 RCW.

6 NEW SECTION. **Sec. 6.** A new section is added to chapter 28B.07 RCW
7 to read as follows:

8 REVENUE REFUNDING BONDS. Bonds may be issued by the authority to
9 refund other outstanding bonds issued pursuant to this act, at or prior
10 to the maturity thereof, and to pay any redemption premium with respect
11 thereto. Bonds issued for such refunding purposes may be combined with
12 bonds issued for the origination or purchase of educational loans.
13 Pending the application of the proceeds of the refunding bonds to the
14 redemption of the bonds to be redeemed, the authority may enter into an
15 agreement or agreements with a corporate trustee with respect to the
16 interim investment of the proceeds and the application of the proceeds
17 and the earnings on the proceeds to the payment of the principal of and
18 interest on, and the redemption of the bonds to be redeemed.

19 NEW SECTION. **Sec. 7.** A new section is added to chapter 28B.07 RCW
20 to read as follows:

21 TRUST AGREEMENTS. All moneys received by or on behalf of the
22 authority under this chapter, whether as proceeds from the sale of
23 bonds or from other sources shall be deemed to be trust funds to be
24 held and applied solely as provided in this chapter. The authority, in
25 lieu of receiving and applying the moneys itself, may enter into an
26 agreement or trust indenture with one or more banks or trust companies
27 having the power and authority to conduct trust business in the state
28 to:

29 (1) Perform all or any part of the obligations of the authority
30 with respect to: (a) Bonds issued by it; (b) the receipt, investment,
31 and application of the proceeds of the bonds and moneys available for
32 the payment of the bonds; and (c) other matters relating to the
33 exercise of the authority's powers under this chapter;

34 (2) Receive, hold, preserve, and enforce any security interest or
35 evidence of security interest granted by a participant for purposes of
36 securing the payment of the bonds; and

1 (3) Act on behalf of the authority or the holders or owners of
2 bonds of the authority for purposes of assuring or enforcing the
3 payment of the bonds, when due.

4 NEW SECTION. **Sec. 8.** A new section is added to chapter 28B.07 RCW
5 to read as follows:

6 PROCEEDS FUNDS. (1) All proceeds derived from a particular bond
7 under the provisions of this act shall be deposited in a fund to be
8 known as the proceeds fund, which shall be maintained in such bank or
9 banks as shall be determined by the authority. Proceeds deposited in
10 the fund shall be expended only on approval of the authority.

11 (2) A separate proceeds fund shall be maintained for each series of
12 bonds issued by the authority.

13 (3) Funds credited to a proceeds fund may be used for any or all of
14 the following purposes:

15 (a) The payment of the necessary expenses, including, without
16 limitation, the costs of issuing the authority's bonds, incurred by the
17 authority in carrying out its responsibilities under sections 2 through
18 13 of this act and RCW 28B.07.030;

19 (b) The establishment of a debt service reserve account to secure
20 the payment of bonds;

21 (c) The making of educational loans to qualified borrowers;

22 (d) The purchase, either directly or acting through a bank with
23 trust powers for its account, of educational loans; and

24 (e) The acquisition of an investment contract or contracts or any
25 other investments permitted under an indenture of the authority
26 securing its bonds. The income from the contract, contracts, or
27 investments, after payment of the bonds and all expenses associated
28 therewith, shall be used by the authority to assist in carrying out its
29 purposes under this act.

30 NEW SECTION. **Sec. 9.** A new section is added to chapter 28B.07 RCW
31 to read as follows:

32 DEFAULT. The proceedings authorizing any revenue obligations under
33 this act or any financing document securing the revenue bonds may
34 provide that if there is a default in the payment of the principal of
35 or the interest on the bonds or in the performance of any agreement
36 contained in the proceedings or financing document, the payment and

1 performance may be enforced by mandamus or by the appointment of a
2 receiver in equity with power to collect revenues in accordance with
3 the proceedings or provisions of the financing document.

4 NEW SECTION. **Sec. 10.** A new section is added to chapter 28B.07
5 RCW to read as follows:

6 CONFLICT WITH FEDERAL REQUIREMENTS. If any part of this act is
7 found to be in conflict with federal requirements under the higher
8 education act of 1965, the conflicting part of this act is hereby
9 declared to be inoperative solely to the extent of the conflict and
10 with respect to the agencies directly affected, and such finding or
11 determination shall not affect the operation of the remainder of this
12 act in its application to the agencies concerned. The rules under this
13 act shall meet federal requirements that are a necessary condition for
14 participation of a state agency under the higher education act of 1965,
15 or its successor.

16 NEW SECTION. **Sec. 11.** A new section is added to chapter 28B.07
17 RCW to read as follows:

18 EXCLUDED FROM DEBT LIMITATION. Bonds issued by the authority under
19 this chapter shall not be subject to the debt limitation set forth in
20 RCW 28B.07.050(9).

21 NEW SECTION. **Sec. 12.** A new section is added to chapter 28B.07
22 RCW to read as follows:

23 SALE OF ASSETS. The authority is authorized to offer for sale from
24 time to time loan portfolios or other assets accumulated by the
25 authority. Sales shall be conducted in a competitive manner and shall
26 be approved by the authority board.

27 NEW SECTION. **Sec. 13.** A new section is added to chapter 28B.07
28 RCW to read as follows:

29 CHAPTER SUPPLEMENTAL. This chapter shall be regarded as
30 supplemental and additional to the powers conferred on the authority by
31 other laws. The issuance of bonds and refunding bonds under this
32 chapter need not comply with requirements of any other laws applicable
33 to the issuance of bonds.

1 **Sec. 14.** RCW 28B.07.030 and 1985 c 370 s 48 are each amended to
2 read as follows:

3 (1) The Washington higher education facilities authority is hereby
4 established as a public body corporate and politic, with perpetual
5 corporate succession, constituting an agency of the state of Washington
6 exercising essential governmental functions. The authority is a
7 "public body" within the meaning of RCW 39.53.010.

8 (2) The authority shall consist of seven members as follows: The
9 governor, lieutenant governor, executive director of the higher
10 education coordinating board, and four public members, one of whom
11 shall be the president of a higher education institution at the time of
12 appointment. The public members shall be residents of the state and
13 appointed by the governor, subject to confirmation by the senate, on
14 the basis of their interest or expertise in the provision of higher
15 education and the financing of higher education. The public members of
16 the authority shall serve for terms of four years. The initial terms
17 of the public members shall be staggered in a manner determined by the
18 governor. In the event of a vacancy on the authority due to death,
19 resignation, or removal of one of the public members, and upon the
20 expiration of the term of any public member, the governor shall appoint
21 a successor for a term expiring on the fourth anniversary of the
22 successor's date of the appointment. If any of the state offices are
23 abolished, the resulting vacancy on the authority shall be filled by
24 the state officer who shall succeed substantially to the power and
25 duties of the abolished office. Any public member of the authority may
26 be removed by the governor for misfeasance, malfeasance, wilful neglect
27 of duty, or any other cause after notice and a public hearing, unless
28 such notice and hearing shall be expressly waived in writing.

29 (3) The governor shall serve as chairperson of the authority. The
30 authority shall elect annually one of its members as secretary. If the
31 governor shall be absent from a meeting of the authority, the secretary
32 shall preside. However, the governor may designate an employee of the
33 governor's office to act on the governor's behalf in all other respects
34 during the absence of the governor at any meeting of the authority. If
35 the designation is in writing and is presented to the person presiding
36 at the meetings of the authority who is included in the designation,
37 the vote of the designee has the same effect as if cast by the
38 governor.

1 (4) Any person designated by resolution of the authority shall keep
2 a record of the proceedings of the authority and shall be the custodian
3 of all books, documents, and papers filed with the authority, the
4 minute book or a journal of the authority, and the authority's official
5 seal, if any. The person may cause copies to be made of all minutes
6 and other records and documents of the authority, and may give
7 certificates to the effect that such copies are true copies. All
8 persons dealing with the authority may rely upon the certificates.

9 (5) Four members of the authority constitute a quorum. Members
10 participating in a meeting through the use of any means of
11 communication by which all members participating can hear each other
12 during the meeting shall be deemed to be present in person at the
13 meeting for all purposes. The authority may act on the basis of a
14 motion except when authorizing the issuance and sale of bonds, in which
15 case the authority shall act by resolution. Bond resolutions and other
16 resolutions shall be adopted upon the affirmative vote of four members
17 of the authority, and shall be signed by those members voting yes.
18 Motions shall be adopted upon the affirmative vote of a majority of a
19 quorum of members present at any meeting of the authority. All actions
20 taken by the authority shall take effect immediately without need for
21 publication or other public notice. A vacancy in the membership of the
22 authority does not impair the power of the authority to act under this
23 chapter.

24 (6) The members of the authority shall be compensated in accordance
25 with RCW 43.03.240 and shall be entitled to reimbursement, solely from
26 the funds of the authority, for travel expenses as determined by the
27 authority incurred in the discharge of their duties under this chapter.

28 NEW SECTION. **Sec. 15.** LIBERAL CONSTRUCTION. This act, being
29 necessary for the welfare of the state and its inhabitants, shall be
30 liberally construed to effect the purposes thereof.

31 NEW SECTION. **Sec. 16.** CAPTIONS. Captions used in this act are
32 not any part of the law.

33 NEW SECTION. **Sec. 17.** 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.

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