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HOUSE BILL 2360

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State of Washington

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By Representatives L. Thomas, Romero, Huff, Wolfe, Ogden, H. Sommers, D. Schmidt, Gardner and Anderson; by request of State Treasurer

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1 AN ACT Relating to financing contracts; amending RCW 39.94.010,  
2 39.94.020, 39.94.030, 39.94.040, 39.36.060, 52.16.061, 52.16.080, and  
3 53.36.030; adding a new section to chapter 39.94 RCW; and creating a  
4 new section.

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

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

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

10 (2) The state treasurer is authorized to levy fees and apply  
11 specified investment earnings from time to time sufficient to pay  
12 program expenses including, but not limited to, costs of issuance, and  
13 to create reserves to assure timely payment of financing contracts.  
14 The investment earnings available for this purpose represent the  
15 earnings on payments received from state and 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 Payments under financing contracts of the state on behalf of any other  
29 agency shall be made from the sources identified in the financing  
30 contract. The treasurer of an other agency shall remit payments under  
31 financing contracts to the office of the state treasurer or to the  
32 state treasurer's designee. In the event of any deficiency of payments  
33 by an other agency under a financing contract, the treasurer of the  
34 other agency shall transfer any legally available funds of the other  
35 agency in satisfaction of the other agency's obligations under the  
36 financing contract if such funds have been obligated by the other  
37 agency under the financing contract and, if such deficiency is not  
38 thereby cured, the office of the state treasurer is directed to

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

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

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

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

33 (b) A financing contract made by the state on behalf of an other  
34 agency may be secured by the pledge of revenues of the other agency or  
35 other agency's full faith and credit or may, at the option of the state  
36 finance committee, include a contingent obligation by the state for  
37 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       **Sec. 6.** RCW 39.36.060 and 1987 c 19 s 5 are each amended to read  
2 as follows:

3       This chapter does not apply to a loan made pursuant to a loan  
4 agreement under chapter 39.69 RCW or a financing contract under chapter  
5 39.94 RCW, and any computation of indebtedness under this chapter shall  
6 exclude the amount of any loan under such a loan agreement.

7       **Sec. 7.** RCW 52.16.061 and 1993 c 231 s 1 are each amended to read  
8 as follows:

9       The board of fire commissioners of the district shall have  
10 authority to contract indebtedness and to refund same for any general  
11 district purpose, including expenses of maintenance, operation and  
12 administration, and the acquisition of firefighting facilities, and  
13 evidence the same by the issuance and sale of general obligation bonds  
14 of the district payable at such time or times not longer than twenty  
15 years from the issuing date of the bonds. Such bonds shall be issued  
16 and sold in accordance with chapter 39.46 RCW. Such bonds shall not  
17 exceed an amount, together with any outstanding nonvoter approved  
18 general obligation indebtedness but excluding financing contracts under  
19 chapter 39.94 RCW, equal to three-eighths of one percent of the value  
20 of the taxable property within the fire protection district, as the  
21 term "value of the taxable property" is defined in RCW 39.36.015.

22       **Sec. 8.** RCW 52.16.080 and 1984 c 186 s 40 are each amended to read  
23 as follows:

24       Fire protection districts additionally are authorized to incur  
25 general indebtedness for capital purposes and to issue general  
26 obligation bonds not to exceed an amount, together with any outstanding  
27 general obligation indebtedness but excluding financing contracts under  
28 chapter 39.94 RCW, equal to three-fourths of one percent of the value  
29 of the taxable property within such district, as the term "value of the  
30 taxable property" is defined in RCW 39.36.015, and to provide for the  
31 retirement thereof by excess property tax levies, when the voters of  
32 the district have approved a proposition authorizing such indebtedness  
33 and levies by an affirmative vote of three-fifths of those voting on  
34 the proposition at such election, at which election the total number of  
35 persons voting shall constitute not less than forty percent of the  
36 voters in the fire protection district who voted at the last preceding  
37 general state election. The maximum term of such bonds may not exceed

1 twenty years. Such bonds shall be issued and sold in accordance with  
2 chapter 39.46 RCW. Such elections shall be held as provided in RCW  
3 39.36.050.

4 **Sec. 9.** RCW 53.36.030 and 1996 c 66 s 1 are each amended to read  
5 as follows:

6 (1)(a) Except as provided in (b) of this subsection, a port  
7 district may at any time contract indebtedness or borrow money for  
8 district purposes and may issue general obligation bonds therefor not  
9 exceeding an amount, together with any existing indebtedness of the  
10 district not authorized by the voters, of one-fourth of one percent of  
11 the value of the taxable property in the district.

12 (b) Port districts having less than eight hundred million dollars  
13 in value of taxable property during 1991 may at any time contract  
14 indebtedness or borrow money for port district purposes and may issue  
15 general obligation bonds therefor not exceeding an amount, combined  
16 with existing indebtedness of the district not authorized by the  
17 voters, of three-eighths of one percent of the value of the taxable  
18 property in the district. Prior to contracting for any indebtedness  
19 authorized by this subsection (1)(b), the port district must have a  
20 comprehensive plan for harbor improvements or industrial development  
21 and a long-term financial plan approved by the department of community,  
22 trade, and economic development. The department of community, trade,  
23 and economic development is immune from any liability for its part in  
24 reviewing or approving port district's improvement or development  
25 plans, or financial plans. Any indebtedness authorized by this  
26 subsection (1)(b) may be used only to acquire or construct a facility,  
27 and, prior to contracting for such indebtedness, the port district must  
28 have a lease contract for a minimum of five years for the facility to  
29 be acquired or constructed by the debt.

30 (2) With the assent of three-fifths of the voters voting thereon at  
31 a general or special port election called for that purpose, a port  
32 district may contract indebtedness or borrow money for district  
33 purposes and may issue general obligation bonds therefor provided the  
34 total indebtedness of the district at any such time shall not exceed  
35 three-fourths of one percent of the value of the taxable property in  
36 the district.

37 (3) In addition to the indebtedness authorized under subsections  
38 (1) and (2) of this section, port districts having less than two

1 hundred million dollars in value of taxable property and operating a  
2 municipal airport may at any time contract indebtedness or borrow money  
3 for airport capital improvement purposes and may issue general  
4 obligation bonds therefor not exceeding an additional one-eighth of one  
5 percent of the value of the taxable property in the district without  
6 authorization by the voters; and, with the assent of three-fifths of  
7 the voters voting thereon at a general or special port election called  
8 for that purpose, may contract indebtedness or borrow money for airport  
9 capital improvement purposes and may issue general obligation bonds  
10 therefor for an additional three-eighths of one percent provided the  
11 total indebtedness of the district for all port purposes at any such  
12 time shall not exceed one and one-fourth percent of the value of the  
13 taxable property in the district.

14 (4) Any port district may issue general district bonds evidencing  
15 any indebtedness, payable at any time not exceeding fifty years from  
16 the date of the bonds. Any contract for indebtedness or borrowed money  
17 authorized by RCW 53.36.030(1)(b) shall not exceed twenty-five years.  
18 The bonds shall be issued and sold in accordance with chapter 39.46  
19 RCW.

20 (5) Elections required under this section shall be held as provided  
21 in RCW 39.36.050.

22 (6) For the purpose of this section, "indebtedness of the district"  
23 shall not include any debt of a county-wide district with a population  
24 less than twenty-five hundred people when the debt is secured by a  
25 mortgage on property leased to the federal government; and the term  
26 "value of the taxable property" shall have the meaning set forth in RCW  
27 39.36.015.

28 (7) This section does not apply to a loan made under a loan  
29 agreement under chapter 39.69 RCW or a financing contract under chapter  
30 39.94 RCW, and a computation of indebtedness under this chapter must  
31 exclude the amount of a loan under such a loan agreement.

32 NEW SECTION. **Sec. 10.** Chapter . . . , Laws of 1998 (this act) is  
33 applicable to an other agency, as defined in RCW 39.94.020, for the  
34 financing of equipment on September 1, 1998, and for the financing of  
35 real estate on July 1, 2000.

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