

CERTIFICATION OF ENROLLMENT  
ENGROSSED SUBSTITUTE HOUSE BILL 2737

53rd Legislature  
1994 Regular Session

Passed by the House March 9, 1994  
Yeas 89 Nays 6

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Speaker of the  
House of Representatives

Passed by the Senate March 9, 1994  
Yeas 41 Nays 4

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President of the Senate

Approved

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Governor of the State of Washington

CERTIFICATE

I, Marilyn Showalter, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2737** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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Chief Clerk

FILED

Secretary of State  
State of Washington

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**ENGROSSED SUBSTITUTE HOUSE BILL 2737**

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AS AMENDED BY THE SENATE

Passed Legislature - 1994 Regular Session

**State of Washington                      53rd Legislature                      1994 Regular Session**

**By** House Committee on Capital Budget (originally sponsored by Representatives Wineberry, Sheldon, Schoesler, Shin and Springer; by request of Department of Trade and Economic Development)

Read first time 02/08/94.

1            AN ACT Relating to the Washington economic development finance  
2 authority; amending RCW 43.163.010, 43.163.080, 43.163.120, and  
3 43.163.130; adding a new section to chapter 43.163 RCW; and declaring  
4 an emergency.

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

6            **Sec. 1.** RCW 43.163.010 and 1989 c 279 s 2 are each amended to read  
7 as follows:

8            As used in this chapter, the following words and terms have the  
9 following meanings, unless the context requires otherwise:

10            (1) "Authority" means the Washington economic development finance  
11 authority created under RCW 43.163.020 or any board, body, commission,  
12 department or officer succeeding to the principal functions of the  
13 authority or to whom the powers conferred upon the authority shall be  
14 given by law;

15            (2) "Bonds" means any bonds, notes, debentures, interim  
16 certificates, conditional sales or lease financing agreements, lines of  
17 credit, forward purchase agreements, investment agreements, and other  
18 banking or financial arrangements, guaranties, or other obligations

1 issued by or entered into by the authority. Such bonds may be issued  
2 on either a tax-exempt or taxable basis;

3 (3) "Borrower" means one or more public or private persons or  
4 entities acting as lessee, purchaser, mortgagor, or borrower who has  
5 obtained or is seeking to obtain financing either from the authority or  
6 from an eligible banking organization that has obtained or is seeking  
7 to obtain funds from the authority to finance a project. A borrower  
8 may include a party who transfers the right of use and occupancy to  
9 another party by lease, sublease or otherwise, or a party who is  
10 seeking or has obtained a financial guaranty from the authority;

11 (4) "Eligible banking organization" means any organization subject  
12 to regulation by the (~~state supervisor of banking or the state~~  
13 ~~supervisor of savings and loans~~) director of the department of  
14 financial institutions, any national bank, federal savings and loan  
15 association, and federal credit union located within this state;

16 (5) "Eligible export transaction" means any preexport or export  
17 activity by a person or entity located in the state of Washington  
18 involving a sale for export and product sale which, in the judgment of  
19 the authority: (a) Will create or maintain employment in the state of  
20 Washington, (b) will obtain a material percent of its value from  
21 manufactured goods or services made, processed or occurring in  
22 Washington, and (c) could not otherwise obtain financing on reasonable  
23 terms from an eligible banking organization;

24 (6) "Eligible farmer" means any person who is a resident of the  
25 state of Washington and whose specific acreage qualifying for receipts  
26 from the federal department of agriculture under its conservation  
27 reserve program is within the state of Washington;

28 (7) "Eligible person" means an individual, partnership,  
29 corporation, or joint venture carrying on business, or proposing to  
30 carry on business within the state and is seeking financial assistance  
31 under section 4 of this act;

32 (8) "Financial assistance" means the infusion of capital to persons  
33 for use in the development and exploitation of specific inventions and  
34 products;

35 (9) "Financing document" means an instrument executed by the  
36 authority and one or more persons or entities pertaining to the  
37 issuance of or security for bonds, or the application of the proceeds  
38 of bonds or other funds of, or payable to, the authority. A financing  
39 document may include, but need not be limited to, a lease, installment

1 sale agreement, conditional sale agreement, mortgage, loan agreement,  
2 trust agreement or indenture, security agreement, letter or line of  
3 credit, reimbursement agreement, insurance policy, guaranty agreement,  
4 or currency or interest rate swap agreement. A financing document also  
5 may be an agreement between the authority and an eligible banking  
6 organization which has agreed to make a loan to a borrower;

7 ~~((+8))~~ (10) "Plan" means the general plan of economic development  
8 finance objectives developed and adopted by the authority, and updated  
9 from time to time, as required under RCW 43.163.090~~((-))~~;

10 (11) "Economic development activities" means activities related to:  
11 Manufacturing, processing, research, production, assembly, tooling,  
12 warehousing, pollution control, energy generating, conservation,  
13 transmission, and sports facilities and industrial parks;

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

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

22 (b) Architectural, engineering, consulting, accounting, and legal  
23 costs related directly to the development, financing, acquisition,  
24 lease, construction, reconstruction, remodeling, refurbishing,  
25 rehabilitation, extension, and enlargement of an activity included  
26 under subsection (11) of this section, including costs of studies  
27 assessing the feasibility of an economic development activity;

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

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

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

38 (f) Other costs incidental to any of the costs listed in this  
39 section;

1       (13) "Product" means a product, device, technique, or process that  
2 is or may be exploitable commercially. "Product" does not refer to  
3 pure research, but shall be construed to apply to products, devices,  
4 techniques, or processes that have advanced beyond the theoretic stage  
5 and are readily capable of being, or have been, reduced to practice;

6       (14) "Financing agreements" means, and includes without limitation,  
7 a contractual arrangement with an eligible person whereby the authority  
8 obtains rights from or in an invention or product or proceeds from an  
9 invention or product in exchange for the granting of financial and  
10 other assistance to the person.

11       **Sec. 2.** RCW 43.163.080 and 1990 c 53 s 5 are each amended to read  
12 as follows:

13       (1) The authority shall adopt general operating procedures for the  
14 authority. The authority shall also adopt operating procedures for  
15 individual programs as they are developed for obtaining funds and for  
16 providing funds to borrowers. These operating procedures shall be  
17 adopted by resolution prior to the authority operating the applicable  
18 programs.

19       (2) The operating procedures shall include, but are not limited to:  
20 (a) Appropriate minimum reserve requirements to secure the authority's  
21 bonds and other obligations; (b) appropriate standards for securing  
22 loans and other financing the authority provides to borrowers, such as  
23 guarantees or collateral; and (c) (~~appropriate~~) strict standards for  
24 providing financing to borrowers, such as (i) the borrower is a  
25 responsible party with a high probability of being able to repay the  
26 financing provided by the authority, (ii) the financing is reasonably  
27 expected to provide economic growth or stability in the state by  
28 enabling a borrower to increase or maintain jobs or capital in the  
29 state, (iii) the borrowers with the greatest needs or that provide the  
30 most public benefit are given higher priority by the authority, and  
31 (iv) the financing is consistent with any plan adopted by the authority  
32 under RCW 43.163.090.

33       **Sec. 3.** RCW 43.163.120 and 1989 c 279 s 13 are each amended to  
34 read as follows:

35       The authority shall receive no appropriation of state funds. The  
36 department of community, trade, and economic development shall provide  
37 staff to the authority, to the extent permitted by law, to enable the

1 authority to accomplish its purposes; the staff from the department of  
2 community, trade, and economic development may assist the authority in  
3 organizing itself and in designing programs, but shall not be involved  
4 in the issuance of bonds or in making credit decisions regarding  
5 financing provided to borrowers by the authority. The authority shall  
6 report each December on its activities to the ~~((house trade and  
7 economic development committee and to the senate economic development  
8 and labor committee))~~ appropriate standing committees of the house of  
9 representatives and senate.

10 NEW SECTION. Sec. 4. A new section is added to chapter 43.163 RCW  
11 to read as follows:

12 For the purpose of facilitating economic development in the state  
13 of Washington and encouraging the employment of Washington workers at  
14 meaningful wages:

15 (1) The authority may develop and conduct a program or programs to  
16 provide nonrecourse revenue bond financing for the project costs for no  
17 more than five economic development activities, per year, included  
18 under the authority's general plan of economic development finance  
19 objectives;

20 (2) The authority may also develop and conduct a program that will  
21 stimulate and encourage the development of new products within  
22 Washington state by the infusion of financial aid for invention and  
23 innovation in situations in which the financial aid would not otherwise  
24 be reasonably available from commercial sources. The authority is  
25 authorized to provide nonrecourse revenue bond financing for this  
26 program.

27 (a) For the purposes of this program, the authority shall have the  
28 following powers and duties:

29 (i) To enter into financing agreements with eligible persons doing  
30 business in Washington state, upon terms and on conditions consistent  
31 with the purposes of this chapter, for the advancement of financial and  
32 other assistance to the persons for the development of specific  
33 products, procedures, and techniques, to be developed and produced in  
34 this state, and to condition the agreements upon contractual assurances  
35 that the benefits of increasing or maintaining employment and tax  
36 revenues shall remain in this state and accrue to it;

37 (ii) Own, possess, and take license in patents, copyrights, and  
38 proprietary processes and negotiate and enter into contracts and

1 establish charges for the use of the patents, copyrights, and  
2 proprietary processes when the patents and licenses for products result  
3 from assistance provided by the authority;

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

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

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

13 (vi) Refer eligible persons to researchers or laboratories for the  
14 purpose of testing and evaluating new products, processes, or  
15 innovations; and

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

20 (b) Eligible persons seeking financial and other assistance under  
21 this program shall forward an application, together with an application  
22 fee prescribed by rule, to the authority. An investigation and report  
23 concerning the advisability of approving an application for assistance  
24 shall be completed by the staff of the authority. The investigation  
25 and report may include, but is not limited to, facts about the company  
26 under consideration as its history, wage standards, job opportunities,  
27 stability of employment, past and present financial condition and  
28 structure, pro forma income statements, present and future markets and  
29 prospects, integrity of management as well as the feasibility of the  
30 proposed product and invention to be granted financial aid, including  
31 the state of development of the product as well as the likelihood of  
32 its commercial feasibility. After receipt and consideration of the  
33 report set out in this subsection and after other action as is deemed  
34 appropriate, the application shall be approved or denied by the  
35 authority. The applicant shall be promptly notified of action by the  
36 authority. In making the decision as to approval or denial of an  
37 application, priority shall be given to those persons operating or  
38 planning to operate businesses of special importance to Washington's  
39 economy, including, but not limited to: (i) Existing resource-based

1 industries of agriculture, forestry, and fisheries; (ii) existing  
2 advanced technology industries of electronics, computer and instrument  
3 manufacturing, computer software, and information and design; and (iii)  
4 emerging industries such as environmental technology, biotechnology,  
5 biomedical sciences, materials sciences, and optics.

6 (3) The authority may also develop and implement, if authorized by  
7 the legislature, such other economic development financing programs  
8 adopted in future general plans of economic development finance  
9 objectives developed under RCW 43.163.090.

10 (4) The authority may not issue any bonds for the programs  
11 authorized under this section after June 30, 2000.

12 **Sec. 5.** RCW 43.163.130 and 1989 c 279 s 14 are each amended to  
13 read as follows:

14 (1) The authority may issue its nonrecourse revenue bonds in order  
15 to obtain the funds to carry out the programs authorized in this  
16 chapter. The bonds shall be special obligations of the authority,  
17 payable solely out of the special fund or funds established by the  
18 authority for their repayment.

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

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

28 (b) The financing document may contain such provisions for  
29 protecting and enforcing the rights, security, and remedies of  
30 bondowners as may be reasonable and proper, including, without limiting  
31 the generality of the foregoing, provisions defining defaults and  
32 providing for remedies in the event of default which may include the  
33 acceleration of maturities, restrictions on the individual rights of  
34 action by bondowners, and covenants setting forth duties of and  
35 limitations on the authority in conduct of its programs and the  
36 management of its property.

37 (c) In addition to other security provided in this chapter or  
38 otherwise by law, bonds issued by the authority may be secured, in



1 whole or in part, by financial guaranties, by insurance or by letters  
2 of credit issued to the authority or a trustee or any other person, by  
3 any bank, trust company, insurance or surety company or other financial  
4 institution, within or without the state. The authority may pledge or  
5 assign, in whole or in part, the revenues and funds held or to be  
6 received by the authority, any present or future contract or other  
7 rights to receive the same, and the proceeds thereof, as security for  
8 such guaranties or insurance or for the reimbursement by the authority  
9 to any issuer of such letter of credit of any payments made under such  
10 letter of credit.

11 (3) Without limiting the powers of the authority contained in this  
12 chapter, in connection with each issue of its obligation bonds, the  
13 authority shall create and establish one or more special funds,  
14 including, but not limited to debt service and sinking funds, reserve  
15 funds, project funds, and such other special funds as the authority  
16 deems necessary, useful, or convenient.

17 (4) Any security interest created against the unexpended bond  
18 proceeds and against the special funds created by the authority shall  
19 be immediately valid and binding against the money and any securities  
20 in which the money may be invested without authority or trustee  
21 possession. The security interest shall be prior to any party having  
22 any competing claim against the moneys or securities, without filing or  
23 recording under Article 9 of the Uniform Commercial Code, Title 62A  
24 RCW, and regardless of whether the party has notice of the security  
25 interest.

26 (5) The bonds may be issued as serial bonds, term bonds or any  
27 other type of bond instrument consistent with the provisions of this  
28 chapter. The bonds shall bear such date or dates; mature at such time  
29 or times; bear interest at such rate or rates, either fixed or  
30 variable; be payable at such time or times; be in such denominations;  
31 be in such form; bear such privileges of transferability,  
32 exchangeability, and interchangeability; be subject to such terms of  
33 redemption; and be sold at public or private sale, in such manner, at  
34 such time or times, and at such price or prices as the authority shall  
35 determine. The bonds shall be executed by the manual or facsimile  
36 signatures of the authority's chair and either its secretary or  
37 executive director, and may be authenticated by the trustee (if the  
38 authority determines to use a trustee) or any registrar which may be  
39 designated for the bonds by the authority.

1 (6) Bonds may be issued by the authority to refund other  
2 outstanding authority bonds, at or prior to maturity of, and to pay any  
3 redemption premium on, the outstanding bonds. Bonds issued for  
4 refunding purposes may be combined with bonds issued for the financing  
5 or refinancing of new projects. Pending the application of the  
6 proceeds of the refunding bonds to the redemption of the bonds to be  
7 redeemed, the authority may enter into an agreement or agreements with  
8 a corporate trustee regarding the interim investment of the proceeds  
9 and the application of the proceeds and the earnings on the proceeds to  
10 the payment of the principal of and interest on, and the redemption of,  
11 the bonds to be redeemed.

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

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

18 (9) The authority may purchase its bonds with any of its funds  
19 available for the purchase. The authority may hold, pledge, cancel or  
20 resell the bonds subject to and in accordance with agreements with  
21 bondowners.

22 (10) The authority shall not exceed two hundred fifty million  
23 dollars in total outstanding debt at any time.

24 (11) The state finance committee shall be notified in advance of  
25 the issuance of bonds by the authority in order to promote the orderly  
26 offering of obligations in the financial markets.

27 (12) The authority may not issue any bonds after June 30, 2000.

28 NEW SECTION. **Sec. 6.** If any provision of this act or its  
29 application to any person or circumstance is held invalid, the  
30 remainder of the act or the application of the provision to other  
31 persons or circumstances is not affected.

32 NEW SECTION. **Sec. 7.** This act is necessary for the immediate  
33 preservation of the public peace, health, or safety, or support of the  
34 state government and its existing public institutions, and shall take  
35 effect immediately.

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