

Chapter 39.46 RCW
BONDS—OTHER MISCELLANEOUS PROVISIONS—REGISTRATION

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RCW 39.46.010 Purposes—Liberal construction. The purposes of this chapter are to permit the state and local governments to conform with registration requirements of federal law which are necessary to exempt interest payments from federal income taxes when the state or local governments issue bonds or incur other obligations and to authorize the establishment and maintenance of differing systems of registering bonds and other obligations as these systems are developed and recognized, which may be instituted, discontinued, and reinstated from time to time. It is further the purpose of this chapter to grant local governments an alternative flexible authority to structure and sell their bond issues and to include a variety of features on their bonds.

This act shall be liberally construed to effect its purposes.
[1983 c 167 s 1.]

Severability—1983 c 167: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 167 s 273.]

RCW 39.46.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Bond" means any agreement, which may or may not be represented by a physical instrument, including notes, warrants, or certificates of indebtedness, that evidences an indebtedness of the state or a local government or a fund thereof, where the state or local government agrees to pay a specified amount of money, with or

without interest, at a designated time or times to either registered owners or bearers, including debt issued under chapter 39.50 RCW.

(2) "Host approval" means an approval of an issue of bonds by an applicable elected representative of the state or local government, having jurisdiction, for purposes of section 147(f)(2)(A)(ii) of the internal revenue code, over the area in which a facility is located that is to be financed with bonds issued by an issuer that is not the state or a local government.

(3) "Local government" means any county, city, town, special purpose district, political subdivision, municipal corporation, or quasi-municipal corporation, including any public corporation or instrumentality created by such an entity.

(4) "Obligation" means an agreement that evidences an indebtedness of the state or a local government or a fund thereof, other than a bond, and includes, but is not limited to, conditional sales contracts, lease obligations, and promissory notes.

(5) "State" includes the state, agencies of the state, and public corporations and instrumentalities created by the state or agencies of the state.

(6) "Treasurer" means the state treasurer, county treasurer, city treasurer, or other officer responsible for treasury functions of any other local government. [2016 c 105 s 6; 2011 c 211 s 1; 2001 c 299 s 15; 1995 c 38 s 6; 1994 c 301 s 10; 1983 c 167 s 2.]

Acts of municipal officers ratified and confirmed—1995 c 38: See note following RCW 3.02.045.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

RCW 39.46.030 Registration system authorized—Requirements—Fiscal agents. (1) The state and local governments are authorized to establish a system of registering the ownership of their bonds or other obligations as to principal and interest, or principal only. Registration may include, without limitation: (a) A book entry system of recording the ownership of a bond or other obligation whether or not a physical instrument is issued; or (b) recording the ownership of a bond or other obligation together with the requirement that the transfer of ownership may only be effected by the surrender of the old bond or other obligation and either the reissuance of the old bond or other obligation or the issuance of a new bond or other obligation to the new owner.

(2) The system of registration shall define the method or methods by which transfer of the registered bonds or other obligations shall be effective, and by which payment of principal and any interest shall be made. The system of registration may permit the issuance of bonds or other obligations in any denomination to represent several registered bonds or other obligations of smaller denominations. The system of registration may also provide for any writing relating to a bond or other obligation that is not issued as a physical instrument, for identifying numbers or other designations, for a sufficient supply of certificates for subsequent transfers, for record and payment dates, for varying denominations, for communications to the owners of bonds or other obligations, for accounting, canceled certificate destruction, registration and release of securing interests, and for

such other incidental matters pertaining to the registration of bonds or other obligations as the issuer may deem to be necessary or appropriate.

(3) (a) The state treasurer or the treasurer of a local government may appoint (i) one or more of the state fiscal agents or (ii) other fiscal agents to act with respect to an issue of its bonds or other obligations as authenticating agent, transfer agent, registrar, and paying or other agent and specify the rights and duties and means of compensation of any such fiscal agent so acting.

(b) The county treasurer as ex officio treasurer of a special district shall act as fiscal agent for such special district, unless the county treasurer appoints either one or more of the state fiscal agents or other fiscal agent selected by the county treasurer to act with respect to an issue of the special district's bonds or other obligations as authenticating agent, transfer agent, registrar, and paying or other fiscal agent and specify the rights and duties and means of compensation of any such fiscal agent.

(4) Nothing in this section precludes the issuer, or a trustee appointed by the issuer pursuant to any other provision of law, from itself performing, either alone or jointly with other issuers, fiscal agencies, or trustees, any transfer, registration, authentication, payment, or other function described in this section. [2016 c 105 s 7; 1995 c 38 s 7; 1994 c 301 s 11; 1985 c 84 s 1; 1983 c 167 s 3.]

Acts of municipal officers ratified and confirmed—1995 c 38: See note following RCW 3.02.045.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

RCW 39.46.040 Bonds—Issuer to determine amount, terms, conditions, interest, etc.—Designated representative. (1) A local government authorized to issue bonds must determine for the bond issue its amount, date or dates, terms not in excess of the maximum term otherwise provided in law, conditions, bond denominations, interest rate or rates, which may be fixed or variable, interest payment dates, maturity or maturities, redemption rights, registration privileges, manner of execution, price, manner of sale, covenants, and form, including registration as to principal and interest, registration as to principal only, or bearer. Registration may be as provided in RCW 39.46.030.

(2) If an ordinance or resolution approving the issuance of bonds authorizes an officer or employee of the local government to serve as its designated representative and to accept, on behalf of the local government, an offer to purchase those bonds, the acceptance of the offer by the designated representative must be consistent with terms established by the ordinance or resolution, and with additional parameters set by the governing body of the local government in the ordinance or resolution. That ordinance or resolution must establish the following terms for the bonds or set forth parameters with respect thereto: The amount, date or dates, denominations, interest rate or rates (or mechanism for determining interest rate or rates), payment dates, final maturity, redemption rights, price, minimum savings for refunding bonds (if the refunding bonds are issued for savings purposes), and any other terms and conditions deemed appropriate by

the legislative body of the local government. A county designating a representative in accordance with this subsection must act in a manner that is consistent with the approved county debt policy adopted in accordance with RCW 36.48.070. [2011 c 210 s 1; 1983 c 167 s 4.]

Application to previously issued bonds—2011 c 210: "All bonds previously issued and any reimbursements previously made with bond proceeds by any local government and consistent with the provisions of this act are hereby validated, ratified, and confirmed." [2011 c 210 s 6.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

RCW 39.46.050 Bonds—Issuer authorized to establish lines of credit. Each local government authorized to issue bonds is authorized to establish lines of credit with any qualified public depository to be drawn upon in exchange for its bonds or other obligations, to delegate to its treasurer authority to determine the amount of credit extended, and to pay interest and other finance or service charges. The interest rates on such bonds or other obligations may be a fixed rate or rates set periodically or a variable rate or rates determined by agreement of the parties. [2003 c 23 s 1; 1983 c 167 s 5.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

RCW 39.46.060 Bonds—Reproduction of physical instrument. Where bonds are issued by the state or a local government as physical instruments, the bonds shall be printed, engraved, lithographed, typed, or reproduced and the manual or facsimile signatures of both a designated officer and chairperson of the governing body or chief executive shall be included on each bond. [1983 c 167 s 6.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

RCW 39.46.070 Bonds—Payment of costs of issuance and sale. (1) Except as provided in subsection (2) of this section, the proceeds of any bonds issued by the state or a local government may be used to pay incidental costs and costs related to the sale and issuance of the bonds. Such costs include payments for fiscal and legal expenses, obtaining bond ratings, printing, engraving, advertising, establishing and funding reserve accounts and other accounts, an amount for working capital, capitalized interest for up to six months after completion of construction, necessary and related engineering, architectural, planning, and inspection costs, and other similar activities or purposes.

(2) In addition to the costs enumerated in subsection (1) of this section, costs authorized under this section include capitalized interest for up to seventy-two months from the date of issuance for bonds issued by the state for the construction of a public toll bridge under chapter 47.46 RCW. [2002 c 114 s 22; 1983 c 167 s 7.]

Finding—Intent—2002 c 114: See RCW 47.46.011.

Captions not law—2002 c 114: See note following RCW 47.46.011.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

RCW 39.46.100 RCW 39.46.010 through 39.46.070 constitutes alternative method. RCW 39.46.010 through 39.46.070 shall be deemed to provide a complete, additional, and alternative method for the performance of those subjects authorized by these sections and shall be regarded as supplemental and additional to powers conferred by other state laws. Whenever bonds and other obligations are issued and sold in conformance with RCW 39.46.010 through 39.46.070, such issuance and sale need not comply with contrary requirements of other state laws applicable to the issuance and sale of bonds or other obligations. [1983 c 167 s 8.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

RCW 39.46.110 Local government general obligation bonds—Indebtedness—Payment—Notice by special district. (1) General obligation bonds of local governments shall be subject to this section. Unless otherwise stated in law, the maximum term of any general obligation bond issue shall be forty years.

(2) General obligation bonds constitute an indebtedness of the local government issuing the bonds that are subject to the indebtedness limitations provided in Article VIII, section 6 of the state Constitution and are payable from tax revenues of the local government and such other money lawfully available and pledged or provided by the governing body of the local government for that purpose. Such governing body may pledge the full faith, credit and resources of the local government for the payment of general obligation bonds. The payment of such bonds shall be enforceable in mandamus against the local government and its officials. The officials now or hereafter charged by law with the duty of levying taxes pledged for the payment of general obligation bonds and interest thereon shall, in the manner provided by law, make an annual levy of such taxes sufficient together with other moneys lawfully available and pledge [pledged] therefor to meet the payments of principal and interest on the bonds as they come due.

(3) General obligation bonds, whether or not issued as physical instruments, shall be executed in the manner determined by the governing body or legislative body of the issuer. If the issuer is the county or a special district for which the county treasurer is the treasurer, the issuer shall notify the county treasurer at least thirty days in advance of authorizing the issuance of bonds or the incurrence of other certificates of indebtedness.

(4) Unless another statute specifically provides otherwise, the owner of a general obligation bond, or the owner of an interest coupon, issued by a local government shall not have any claim against the state arising from the general obligation bond or interest coupon.

(5) As used in this section, the term "local government" means every unit of local government, including municipal corporations, quasi municipal corporations, and political subdivisions, where property ownership is not a prerequisite to vote in the local government's elections. [1998 c 106 s 7; 1995 c 38 s 8; 1994 c 301 s 12; 1984 c 186 s 2.]

Acts of municipal officers ratified and confirmed—1995 c 38: See note following RCW 3.02.045.

Purpose—1984 c 186: "The purpose of this 1984 act is to provide simplified and uniform authorities for various local governments to issue and sell general obligation bonds. It is not the purpose of this 1984 act to alter the indebtedness limitation of local governments." [1984 c 186 s 1.]

RCW 39.46.120 Notice of intent to sell general obligation bonds. Notice of intent to sell general obligation bonds at a public sale shall be provided in a reasonable manner as determined by the legislative authority or governing body of the issuer. [1984 c 186 s 4.]

Purpose—1984 c 186: See note following RCW 39.46.110.

RCW 39.46.150 Revenue bonds—Alternative method of issuance—Limitations. (1) Any local government authorized to issue revenue bonds may issue revenue bonds under this section and RCW 39.46.160. If a local government chooses to issue revenue bonds under this section and RCW 39.46.160, the issue shall be subject to the limitations and restrictions of these sections. The authority to issue revenue bonds under this section and RCW 39.46.160 is supplementary and in addition to any authority otherwise existing. The maximum term of any revenue bonds shall be forty years unless another statute authorizing the local government to issue revenue bonds provides for a different maximum term, in which event the local government may issue revenue bonds only with terms not in excess of such different maximum term.

(2) The governing body of a local government issuing revenue bonds shall create a special fund or funds, or use an existing special fund or funds, exclusively from which, along with reserve funds which may be created by the governing body, the principal and interest on such revenue bonds shall be payable. These reserve funds include those authorized to be created by RCW 39.46.160.

Subject to the limitations contained in this section, the governing body of a local government may provide such covenants as it may deem necessary to secure the payment of the principal of and interest on revenue bonds, and premium on revenue bonds, if any. Such covenants may include, but are not limited to, depositing certain revenues into a special fund or funds as provided in subsection (3) of this section; establishing, maintaining, and collecting fees, rates, charges, tariffs, or rentals, on facilities and services, the income of which is pledged for the payment of such bonds; operating, maintaining, managing, accounting, and auditing the local government; appointing trustees, depositaries, and paying agents; and any and all

matters of like or different character, which affect the security or protection of the revenue bonds.

(3) The governing body may obligate the local government to set aside and pay into a special fund or funds created under subsection (2) of this section a proportion or a fixed amount of the revenues from the following: (a) The public improvements, projects, or facilities that are financed by the revenue bonds; or (b) the public utility or system, or an addition or extension to the public utility or system, where the improvements, projects, or facilities financed by the revenue bonds are a portion of the public utility or system; or (c) all the revenues of the local government; or (d) any other money legally available for such purposes. As used in this subsection, the term "revenues" includes the operating revenues of a local government that result from fees, rates, charges, tariffs, or rentals imposed upon the use or availability or benefit from projects, facilities, or utilities owned or operated by the local government and from related services provided by the local government and other revenues legally available to be pledged to secure the revenue bonds.

The proportion or fixed amount of revenue so obligated shall be a lien and charge against these revenues, subject only to maintenance and operating expenses. The governing body shall have due regard for the cost of maintenance and operation of the public utility, system, improvement, project, facility, addition, or extension that generates revenues obligated to be placed into the special fund or funds from which the revenue bonds are payable, and shall not set aside into the special fund or funds a greater amount or proportion of the revenues that in its judgment will be available over and above such cost of maintenance and operation and the proportion or fixed amount, if any, of the revenue so previously pledged. Other revenues, including tax revenues, lawfully available for maintenance or operation of revenue generating facilities may be used for maintenance and operation purposes even though the facilities are acquired, constructed, expanded, replaced, or repaired with moneys arising from the sale of revenue bonds. However, the use of these other revenues for maintenance and operation purposes shall not be deemed to directly or indirectly guarantee the revenue bonds or create a general obligation. The obligation to maintain and impose fees, rates, charges, tariffs, or rentals at levels sufficient to finance maintenance and operations shall remain if the other revenues available for such purposes diminish or cease.

The governing body may also provide that revenue bonds payable out of the same source or sources of revenue may later be issued on a parity with any revenue bonds being issued and sold.

(4) A revenue bond issued by a local government shall not constitute an obligation of the state, either general or special, nor a general obligation of the local government issuing the bond, but is a special obligation of the local government issuing the bond, and the interest and principal on the bond shall only be payable from the special fund or funds established pursuant to subsection (2) of this section, the revenues lawfully pledged to the special fund or funds, and any lawfully created reserve funds. The owner of a revenue bond shall not have any claim for the payment thereof against the local government arising from the revenue bond except for payment from the special fund or funds, the revenues lawfully pledged to the special fund or funds, and any lawfully created reserve funds. The owner of a revenue bond issued by a local government shall not have any claim against the state arising from the revenue bond. Tax revenues shall

not be used directly or indirectly to secure or guarantee the payment of the principal of or interest on revenue bonds.

[(5)] The substance of the limitations included in this subsection shall be plainly printed, written, engraved, or reproduced on: (a) Each revenue bond that is a physical instrument; (b) the official notice of sale; and (c) each official statement associated with the bonds.

(6) The authority to create a fund shall include the authority to create accounts within a fund.

(7) Local governments issuing revenue bonds, payable from revenues derived from projects, facilities, or utilities, shall covenant to maintain and keep these projects, facilities, or utilities in proper operating condition for their useful life. [1986 c 168 s 1.]

Funds for reserve purposes may be included in issue amount: RCW 39.44.140.

RCW 39.46.160 Revenue bonds—Alternative method of issuance—Bonds may include reserve funds. Any local government issuing revenue bonds under this section and RCW 39.46.150 may include in the amount of any such issue money for the purpose of establishing, maintaining, or increasing reserve funds to:

(1) Secure the payment of the principal of and interest on such revenue bonds; or

(2) Provide for replacements or renewals of or repairs or betterments to revenue producing facilities; or

(3) Provide for contingencies, including, but not limited to, loss of revenue caused by such contingencies. [1986 c 168 s 2.]

RCW 39.46.170 Out-of-state issuers—Issuance of bonds for projects within the state. (1) It is the policy of this state that in order to maintain an effective system of monitoring the use of federal subsidies within the state, facilities within the state proposed to be financed with bonds issued by an issuer formed or organized under the laws of another state must receive prior approval from the statewide issuer authorized by the laws of Washington to issue bonds for the proposed project in accordance with this section.

(2) (a) At least one hundred twenty days prior to the public hearing for the proposed issuance of bonds for a project located in this state by an issuer formed or organized under the laws of another state, the issuer must notify the statewide issuer authorized under the laws of Washington to issue bonds for the proposed project and provide the information required under (b) of this subsection.

(b) The following items and information must be received by the statewide issuer authorized under the laws of Washington to issue bonds for the proposed project:

(i) A copy of the proposed notice of public hearing pertaining to the facilities, providing the date and location of the proposed hearing;

(ii) The maximum stated principal amount of the bonds;

(iii) A description of the facility, including its location;

(iv) A description of the plan of finance;

(v) The name of the issuer of the bonds;

(vi) The name of the initial owner or principal user of the facility;

(vii) A description of how the project will meet the public policy requirements and objectives of this state including the policies of the statewide issuer under Washington law; and

(viii) A check in the amount established by the statewide issuer under Washington law to perform the review.

(c) If the statewide issuer authorized to issue the bonds under Washington law determines that the facility and the items and information submitted under (b) of this subsection are consistent with the laws and public policy of the state and are in the best interest of the state, then the statewide issuer shall issue a written approval under this section authorizing the governmental unit to grant its host approval of the public hearing in its discretion.

(d) If the statewide issuer authorized to issue the bonds under Washington law determines that the facility and the items and information submitted under (b) of this subsection are not consistent with the laws and public policy of the state and are not in the best interest of the state, then the public hearing may not proceed and the bonds may not be issued by an issuer formed or organized under the laws of another state.

(3) (a) By December 1, 2011, annually each December 1st until December 1, 2014, and December 1st every five years thereafter, each statewide issuer receiving the notice required by subsection (2) of this section from an issuer formed or organized under the laws of another state shall, within existing funds, submit a report to the appropriate committees of the legislature.

(b) Each report under (a) of this subsection must provide, for annual reports the following information from the previous fiscal year, and for other reports the following information from each of the previous fiscal years:

(i) The number of proposed projects for which the statewide issuer received notice and the information described under subsection (2) of this section;

(ii) A description of the projects for which notice was submitted;

(iii) The dollar amount of each proposed project;

(iv) The location of each proposed project;

(v) Whether the proposed project was approved by the statewide issuer; and

(vi) For any project that was not approved by the statewide issuer, the reasons for the statewide issuer's decision. [2011 c 211 s 2.]