

Chapter 39.94 RCW
FINANCING CONTRACTS

Sections

- 39.94.010 Purposes—Construction.
- 39.94.020 Definitions.
- 39.94.030 Authority to enter into financing contracts—Terms—Intent—Obligation of state revenues.
- 39.94.040 State finance committee—Duties—Legislative approval required, when.
- 39.94.050 Financing program to be self-supporting—Payment of program expenses.
- 39.94.900 Application.

RCW 39.94.010 Purposes—Construction. The purposes of this chapter are to confirm the authority of the state, its agencies, departments, and instrumentalities, the state board for community and technical colleges, and the state institutions of higher education to enter into contracts for the acquisition of real and personal property which provide for payments over a term of more than one year and to exclude such contracts from the computation of indebtedness under Article VIII, section 1 of the state Constitution. It is further the purpose of this chapter to permit the state, its agencies, departments, and instrumentalities, the state board for community and technical colleges, and the state institutions of higher education to enter into financing contracts which make provision for the issuance of certificates of participation and other financing structures. Financing contracts of the state, whether or not entered into under this chapter, shall be subject to approval by the state finance committee except as provided in this chapter.

This chapter shall be liberally construed to effect its purposes.
[2009 c 500 § 6; 1998 c 291 § 2; 1989 c 356 § 1.]

Effective date—2009 c 500: See note following RCW 39.42.070.

Application—1998 c 291: See note following RCW 39.94.050.

RCW 39.94.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Credit enhancement" includes insurance, letters of credit, lines of credit, or other similar agreements which enhance the security for the payment of the state's or an other agency's obligations under financing contracts.

(2) "Financing contract" means any contract entered into by the state for itself or on behalf of an other agency which provides for the use and purchase of real or personal property by the state and provides for payment by the state over a term of more than one year, and which provides that title to the subject property may secure performance of the state or transfer to the state or an other agency by the end of the term, upon exercise of an option, for a nominal amount or for a price determined without reference to fair market value. Financing contracts include, but are not limited to,

conditional sales contracts, financing leases, lease purchase contracts, or refinancing contracts, but do not include operating or true leases. For purposes of this chapter, the term "financing contract" does not include any nonrecourse financing contract or other obligation payable only from money or other property received from private sources and not payable from any public money or property. The term "financing contract" includes a "master financing contract."

(3) "Master financing contract" means a financing contract which provides for the use and purchase of property by the state, and which may include more than one financing contract and appropriation.

(4) "Other agency" means any commission established under Title 15 RCW, a library or regional library, an educational service district, the superintendent of public instruction, the school directors' association, a health district, a public facilities district, or any county, city, town, school district, or other municipal corporation or quasi-municipal corporation.

(5) "State" means the state, agency, department, or instrumentality of the state, the state board for community and technical colleges, and any state institution of higher education.

(6) "State finance committee" means the state finance committee under chapter 43.33 RCW.

(7) "Trustee" means a bank or trust company, within or without the state, authorized by law to exercise trust powers. [2010 1st sp.s. c 15 § 13; 2010 c 115 § 1; 1998 c 291 § 3; 1990 c 47 § 3; 1989 c 356 § 2.]

Findings—Intent—Construction—2010 1st sp.s. c 15: See notes following RCW 36.100.010.

Authority—2010 c 115: See note following RCW 39.94.030.

Application—1998 c 291: See note following RCW 39.94.050.

RCW 39.94.030 Authority to enter into financing contracts—Terms—Intent—Obligation of state revenues. (1) The state may enter into financing contracts for itself or on behalf of an other agency for the use and acquisition for public purposes of real and personal property. Payments under financing contracts of the state shall be made by the state from currently appropriated funds or funds not constituting "general state revenues" as defined in Article VIII, section 1 of the state Constitution. Except as provided in subsection (4)(b) of this section, payments under financing contracts of the state on behalf of any other agency shall be made solely from the sources identified in the financing contract, which may not obligate general state revenues as defined in Article VII, section 1 of the state Constitution. The treasurer of an other agency shall remit payments under financing contracts to the office of the state treasurer or to the state treasurer's designee. In the event of any deficiency of payments by an other agency under a financing contract, the treasurer of the other agency shall transfer any legally available funds of the other agency in satisfaction of the other agency's obligations under the financing contract if such funds have been obligated by the other agency under the financing contract and, if such deficiency is not thereby cured, the office of the state treasurer is directed to withdraw from that agency's share of state revenues for distribution or other money an

amount sufficient to fulfill the terms and conditions of the financing contract. The term of any financing contract shall not exceed thirty years or the remaining useful life of the property, whichever is shorter. Financing contracts may include other terms and conditions agreed upon by the parties.

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

(3) The state or an other agency may grant a security interest in real or personal property acquired under financing contracts. The security interest may be perfected as provided by the uniform commercial code - secured transactions, or otherwise as provided by law for perfecting liens on real estate. Other terms and conditions may be included as agreed upon by the parties. An other agency that is authorized by applicable law to enter into a financing contract may make payments due under such a contract from the proceeds of annual tax levies approved by the voters under RCW 84.52.056, among other sources.

(4) (a) Financing contracts and contracts for credit enhancement entered into under the limitations set forth in this chapter do not constitute a debt or the contracting of indebtedness under any law limiting debt of the state. It is the intent of the legislature that such contracts also do not constitute a debt or the contracting of indebtedness under Article VIII, section 1 of the state Constitution. Certificates of participation in payments to be made under financing contracts also do not constitute a debt or the contracting of an indebtedness under any law limiting debt of the state if payment is conditioned upon payment by the state under the financing contract with respect to which the same relates. It is the intent of the legislature that such certificates also do not constitute a debt or the contracting of indebtedness under Article VIII, section 1 of the state Constitution if payment of the certificates is conditioned upon payment by the state under the financing contract with respect to which those certificates relate.

(b) An other agency authorized by law to issue bonds, notes or other evidences of indebtedness or to enter into conditional sales contracts or lease obligations, may participate in a program under this chapter in which the state enters into a financing contract on behalf of that other agency, and the other agency's obligations to the state under the program may be evidenced by an agreement, lease, bond, note, or other appropriate instrument. A financing contract made by the state on behalf of an other agency may be secured by the pledge of revenues of the other agency or other agency's full faith and credit or may, at the option of the state finance committee, include a contingent obligation by the state for payment under such financing contract. [2010 c 115 § 2; 2009 c 500 § 7; 1998 c 291 § 4; 1989 c 356 § 3.]

Authority—2010 c 115: "The authority conferred on the state and any municipal corporation or other agency under this act is in addition and supplemental to any other authority granted by applicable law. Any action previously taken by the state, a municipal corporation, or other agency consistent with the provisions of this act is approved and confirmed." [2010 c 115 § 4.]

Effective date—2009 c 500: See note following RCW 39.42.070.

Application—1998 c 291: See note following RCW 39.94.050.

RCW 39.94.040 State finance committee—Duties—Legislative approval required, when. (1) Except as provided in RCW 28B.10.022, the state may not enter into any financing contract for itself if the aggregate principal amount payable thereunder is greater than an amount to be established from time to time by the state finance committee or participate in a program providing for the issuance of certificates of participation, including any contract for credit enhancement, without the prior approval of the state finance committee. Except as provided in RCW 28B.10.022, the state finance committee shall approve the form of all financing contracts or a standard format for all financing contracts. The state finance committee also may:

(a) Consolidate existing or potential financing contracts into master financing contracts with respect to property acquired by one or more agencies, departments, instrumentalities of the state, the state board for community and technical colleges, or a state institution of higher learning; or to be acquired by another agency;

(b) Approve programs providing for the issuance of certificates of participation in master financing contracts for the state or for other agencies;

(c) Enter into agreements with trustees relating to master financing contracts; and

(d) Make appropriate rules for the performance of its duties under this chapter.

(2) In the performance of its duties under this chapter, the state finance committee may consult with representatives from the department of general administration, the office of financial management, and the office of the chief information officer.

(3) With the approval of the state finance committee, the state also may enter into agreements with trustees relating to financing contracts and the issuance of certificates of participation.

(4) Except for financing contracts for real property used for the purposes described under chapter 28B.140 RCW, the state may not enter into any financing contract for real property of the state without prior approval of the legislature. For the purposes of this requirement, a financing contract must be treated as used for real property if it is being entered into by the state for the acquisition of land; the acquisition of an existing building; the construction of a new building; or a major remodeling, renovation, rehabilitation, or rebuilding of an existing building. Prior approval of the legislature is not required under this chapter for a financing contract entered into by the state under this chapter for energy conservation improvements to existing buildings where such improvements include: (a) Fixtures and equipment that are not part of a major remodeling, renovation, rehabilitation, or rebuilding of the building, or (b) other improvements to the building that are being performed for the primary purpose of energy conservation. Such energy conservation improvements must be determined eligible for financing under this chapter by the office of financial management in accordance with financing guidelines established by the state treasurer, and are to be treated as personal property for the purposes of this chapter.

(5) The state may not enter into any financing contract on behalf of another agency without the approval of such a financing contract by the governing body of the other agency. [2011 1st sp.s. c 43 § 726; 2011 c 151 § 7. Prior: 2010 1st sp.s. c 36 § 6015; 2010 1st sp.s. c 35 § 406; 2003 c 6 § 2; 2002 c 151 § 6; 1998 c 291 § 5; 1989 c 356 § 4.]

Reviser's note: This section was reenacted by 2011 c 151 § 7 and amended by 2011 1st sp.s. c 43 § 726, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Purpose—2011 1st sp.s. c 43: See notes following RCW 43.19.003.

Effective date—2010 1st sp.s. c 36: See note following RCW 43.155.050.

Contingent effective date—2010 1st sp.s. c 35: See note following RCW 43.331.040.

Application—1998 c 291: See note following RCW 39.94.050.

RCW 39.94.050 Financing program to be self-supporting—Payment of program expenses. (1) It is the intent of the legislature that the financing program authorized by this chapter be self-supporting.

(2) The state treasurer is authorized to levy fees and apply specified investment earnings from time to time in amounts not to exceed sums sufficient to pay program expenses including, but not limited to, costs of issuance, and to create reserves to assure timely payment of financing contracts. The investment earnings available for this purpose represent the earnings on payments received from state and other agencies. [1998 c 291 § 1.]

Application—1998 c 291: "Chapter 291, Laws of 1998 is applicable to an other agency, as defined in RCW 39.94.020, for the financing of equipment on September 1, 1998, and for the financing of real estate on July 1, 2000." [1998 c 291 § 6.]

RCW 39.94.900 Application. The provisions of this chapter shall apply to all financing contracts entered into following July 23, 1989. [1989 c 356 § 5.]