

Chapter 28B.07 RCW
WASHINGTON HIGHER EDUCATION FACILITIES AUTHORITY

Sections

GENERAL PROVISIONS

- 28B.07.010 Findings—Intent—Liberal construction.
- 28B.07.020 Definitions.
- 28B.07.021 Definitions.
- 28B.07.030 Washington higher education facilities authority—Created—Members—Chairperson—Records—Quorum—Compensation and travel expenses.
- 28B.07.040 Powers and duties.
- 28B.07.050 Special obligation bonds—Issuance—Personal liability—Debt limit.
- 28B.07.060 Bonds—Special obligations—Payment—Funds—Segregation of proceeds and moneys.
- 28B.07.070 Agreements with participant—Participant's payment of certain costs and expenses.
- 28B.07.080 Moneys deemed trust funds—Agreement or trust indenture with bank or trust company authorized.
- 28B.07.090 Holders or owners of bonds—Trustees—Enforcement of rights—Purchase at foreclosure sale.
- 28B.07.100 Bonds are securities—Legal investments.
- 28B.07.110 Projects or financing—Exemption from certain restrictions on procedures for awarding contracts.
- 28B.07.120 Bond counsel—Selection.
- 28B.07.130 Underwriters—Selection.

STUDENT LOAN FINANCING

- 28B.07.300 Student loan financing—Authority—Liability.
- 28B.07.310 Administration of alternative state educational loans.
- 28B.07.320 Revenue bonds—Issuance—Payment—Personal liability.
- 28B.07.330 Revenue refunding bonds.
- 28B.07.340 Trust funds—Trust agreements.
- 28B.07.350 Proceeds fund.
- 28B.07.360 Default.
- 28B.07.370 Debt limitation.
- 28B.07.380 Sale of assets.

CONSTRUCTION

- 28B.07.900 Chapter supplemental—Application of other laws.
- 28B.07.910 Construction—1983 c 169.
- 28B.07.925 Chapter supplemental—Application of other laws.
- 28B.07.926 Construction—2007 c 36.
- 28B.07.927 Conflict with federal requirements—2007 c 36.

GENERAL PROVISIONS

RCW 28B.07.010 Findings—Intent—Liberal construction. The legislature finds that the state has a vital interest in ensuring that higher education institutions are maintained in the state in sufficient numbers and located in such locations, as to be accessible

to as many citizens as possible. Adequate educational opportunities are essential to the economic, intellectual, and social well-being of the state and its people. Washington's independently-governed private nonprofit higher education institutions are a necessary part of the state's higher educational resources. They provide educational diversity and choice for all residents of the communities in which they are located, communities which may not otherwise be served directly by a public baccalaureate-granting college or university.

The legislature further finds that some of the factors that contribute to educational costs are beyond the control of these higher education institutions and their governing boards. The factors include the need to modify facilities to render the facilities accessible to individuals with disabilities, the necessity of modernizing structures to keep them safe and efficient, and the demands of energy conservation and resource utilization. Many of these needs are associated with the public functions these institutions perform and the requirements of the state and federal governments. Compounding the problem is the fact that the cost of these renovations are borne entirely by the institutions.

Because these institutions serve an important public purpose addressing both the needs of individuals and the needs of the state, and because the performance of that public function can be facilitated at no expense or liability to the state, the legislature declares it to be the public policy of the state of Washington to enable the building, providing, and utilization of modern, well-equipped, efficient, and reasonably priced higher educational facilities, as well as the improvement, expansion, and modernization of such facilities, in a manner that will minimize the capital cost of construction, financing, and use of such facilities. The intention of this policy is to improve and ensure the quality and range of educational services available to the citizens of this state. The intent of the legislature is to accomplish these and related purposes, and this chapter shall be liberally construed in order to further these goals. [2020 c 274 s 10; 1983 c 169 s 1.]

RCW 28B.07.020 Definitions. As used in this chapter, the following words and terms shall have the following meanings, unless the context otherwise requires:

- (1) "Authority" means the Washington higher education facilities authority created under RCW 28B.07.030 or any board, body, commission, department or officer succeeding to the principal functions of the authority or to whom the powers conferred upon the authority shall be given by law.
- (2) "Bonds" means bonds, notes, commercial paper, certificates of indebtedness, or other evidences of indebtedness of the authority issued under this chapter.
- (3) "Bond resolution" means any resolution of the authority, adopted under this chapter, authorizing the issuance and sale of bonds.
- (4) "Higher education institution" means a private, nonprofit educational institution, the main campus of which is permanently situated in the state, which is open to residents of the state, which neither restricts entry on racial or religious grounds, which provides programs of education beyond high school leading at least to the baccalaureate degree, and which is accredited by the Northwest

Association of Schools and Colleges or by an accrediting association recognized by the council for higher education.

(5) "Participant" means a higher education institution which, under this chapter, undertakes the financing of a project or projects or undertakes the refunding or refinancing of obligations, mortgages, or advances previously incurred for a project or projects.

(6) "Project" means any land or any improvement, including, but not limited to, buildings, structures, fixtures, utilities, machinery, excavations, paving, and landscaping, and any interest in such land or improvements, and any personal property pertaining or useful to such land and improvements, which are necessary, useful, or convenient for the operation of a higher education institution, including but not limited to, the following: Dormitories or other multiunit housing facilities for students, faculty, officers, or employees; dining halls; student unions; administration buildings; academic buildings; libraries; laboratories; research facilities; computer facilities; classrooms; athletic facilities; health care facilities; maintenance, storage, or utility facilities; parking facilities; or any combination thereof, or any other structures, facilities, or equipment so related.

(7) "Project cost" means any cost related to the acquisition, construction, improvement, alteration, or rehabilitation by a participant or the authority of any project and the financing of the project through the authority, including, but not limited to, the following costs paid or incurred: Costs of acquisition of land or interests in land and any improvement; costs of contractors, builders, laborers, material suppliers, and suppliers of tools and equipment; costs of surety and performance bonds; fees and disbursements of architects, surveyors, engineers, feasibility consultants, accountants, attorneys, financial consultants, and other professionals; interest on bonds issued by the authority during any period of construction; principal of and interest on interim financing of any project; debt service reserve funds; depreciation funds, costs of the initial start-up operation of any project; fees for title insurance, document recording, or filing; fees of trustees and the authority; taxes and other governmental charges levied or assessed on any project; and any other similar costs. Except as specifically set forth in this definition, the term "project cost" does not include books, fuel, supplies, and similar items which are required to be treated as a current expense under generally accepted accounting principles.

(8) "Trust indenture" means any agreement, trust indenture, or other similar instrument by and between the authority and one or more corporate trustees. [2011 1st sp.s. c 11 s 136; 2007 c 218 s 86; 1985 c 370 s 47; 1983 c 169 s 2.]

Effective date—2011 1st sp.s. c 11 ss 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Intent—Finding—2007 c 218: See note following RCW 41.08.020.

RCW 28B.07.021 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Educational loans" means:

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

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

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

(4) "Participating institution" means any posthigh school educational institution, public or private, whose students are eligible for educational loans.

(5) "Qualified borrower" means a student, or the parent of a student, who: (a) Qualifies for an educational loan; and (b) is a resident of the state of Washington or has been accepted for enrollment at or is attending a participating institution within the state of Washington. [2007 c 36 s 2.]

Policy—Purpose—2007 c 36: See note following RCW 28B.07.300.

RCW 28B.07.030 Washington higher education facilities authority—Created—Members—Chairperson—Records—Quorum—Compensation and travel expenses. (1) The Washington higher education facilities authority is hereby established as a public body corporate and politic, with perpetual corporate succession, constituting an agency of the state of Washington exercising essential governmental functions. The authority is a "public body" within the meaning of RCW 39.53.010.

(2) The authority shall consist of seven members as follows: The governor, lieutenant governor, chair of the student achievement council or the chair's designee, and four public members, one of whom shall be the president of a higher education institution at the time of appointment. The public members shall be residents of the state and appointed by the governor, subject to confirmation by the senate, on the basis of their interest or expertise in the provision of higher education and the financing of higher education. The public members of the authority shall serve for terms of four years. The initial terms of the public members shall be staggered in a manner determined by the governor. In the event of a vacancy on the authority due to death, resignation, or removal of one of the public members, and upon the expiration of the term of any public member, the governor shall

appoint a successor for a term expiring on the fourth anniversary of the successor's date of the appointment. If any of the state offices are abolished, the resulting vacancy on the authority shall be filled by the state officer who shall succeed substantially to the power and duties of the abolished office. Any public member of the authority may be removed by the governor for misfeasance, malfeasance, willful neglect of duty, or any other cause after notice and a public hearing, unless such notice and hearing shall be expressly waived in writing.

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

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

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

(6) The members of the authority shall be compensated in accordance with RCW 43.03.240 and shall be entitled to reimbursement, solely from the funds of the authority, for travel expenses as determined by the authority incurred in the discharge of their duties under this chapter. [2013 c 217 s 1; 2011 1st sp.s. c 11 s 137; 2007 c 36 s 14; 1985 c 370 s 48; 1984 c 287 s 62; 1983 c 169 s 3.]

Effective date—2011 1st sp.s. c 11 ss 101-103, 106-202, 204-244, and 301: See note following RCW 28B.76.020.

Intent—2011 1st sp.s. c 11: See note following RCW 28B.76.020.

Policy—Purpose—2007 c 36: See note following RCW 28B.07.300.

Legislative findings—Severability—Effective date—1984 c 287:

See notes following RCW 43.03.220.

RCW 28B.07.040 Powers and duties. The authority is authorized and empowered to do the following, on such terms, with such security and undertakings, subject to such conditions, and in return for such consideration, as the authority shall determine in its discretion to be necessary, useful, or convenient in accomplishing the purposes of this chapter:

(1) To promulgate rules in accordance with chapter 34.05 RCW;

(2) To adopt an official seal and to alter the same at pleasure;

(3) To maintain an office at any place or places as the authority may designate;

(4) To sue and be sued in its own name, and to plead and be impleaded;

(5) To make and execute agreements with participants and others and all other instruments necessary, useful, or convenient for the accomplishment of the purposes of this chapter;

(6) To provide long-term or short-term financing or refinancing to participants for project costs, by way of loan, lease, conditional sales contract, mortgage, option to purchase, or other financing or security device or any such combination;

(7) If, in order to provide to participants the financing or refinancing of project costs described in subsection (6) of this section, the authority deems it necessary or convenient for it to own a project or projects or any part of a project or projects, for any period of time, it may acquire, contract, improve, alter, rehabilitate, repair, manage, operate, mortgage, subject to a security interest, lease, sell, or convey the project;

(8) To fix, revise from time to time, and charge and collect from participants and others rates, rents, fees, charges, and repayments as necessary to fully and timely reimburse the authority for all expenses incurred by it in providing the financing and refinancing and other services under this section and for the repayment, when due, of all the principal of, redemption premium, if any, and interest on all bonds issued under this chapter to provide the financing, refinancing, and services;

(9) To accept and receive funds, grants, gifts, pledges, guarantees, mortgages, trust deeds, and other security instruments, and property from the federal government or the state or other public body, entity, or agency and from any public or private institution, association, corporation, or organization, including participants. It shall not accept or receive from the state or any taxing agency any money derived from taxes, except money to be devoted to the purposes of a project of the state or of a taxing agency;

(10) To open and maintain a bank account or accounts in one or more qualified public depositories in this state and to deposit all or any part of authority funds therein;

(11) To employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, an executive director, and such other employees and agents as may be necessary in its judgment to carry out the purposes of this chapter, and to fix their compensation;

(12) To provide financing or refinancing to two or more participants for a single project or for several projects in such combinations as the authority deems necessary, useful, or convenient;

(13) To charge to and equitably apportion among participants the administrative costs and expenses incurred in the exercise of the powers and duties conferred by this chapter;

(14) To consult with the student achievement council to determine project priorities under the purposes of this chapter;

(15) Provide for the investment of any funds, including funds held in reserve, not required for immediate disbursement, and provide for the selection of investments; and

(16) To do all other things necessary, useful, or convenient to carry out the purposes of this chapter.

In the exercise of any of these powers, the authority shall incur no expense or liability which shall be an obligation, either general or special, of the state, or a general obligation of the authority, and shall pay no expense or liability from funds other than funds of the authority. Funds of the state shall not be used for such purpose. [2016 c 152 s 8; 2012 c 229 s 508; 1985 c 370 s 49; 1983 c 169 s 4.]

Effective date—2012 c 229 ss 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904:
See note following RCW 28B.77.005.

RCW 28B.07.050 Special obligation bonds—Issuance—Personal liability—Debt limit. (1) The authority may, from time to time, issue its special obligation bonds in order to carry out the purposes of this chapter and to enable the authority to exercise any of the powers granted to it in this chapter. The bonds shall be issued pursuant to a bond resolution or trust indenture and shall be payable solely out of the special fund or funds created by the authority in the bond resolution or trust indenture. The special fund or funds shall be funded in whole or in part from moneys paid by one or more participants for whose benefit such bonds were issued and from the sources, if any, described in RCW 28B.07.040(9) or from the proceeds of bonds issued by the authority for the purpose of refunding any outstanding bonds of the authority.

(2) The bonds may be secured by:

(a) A first lien against any unexpended proceeds of the bonds;

(b) A first lien against moneys in the special fund or funds created by the authority for their payment;

(c) A first or subordinate lien against the revenue and receipts of the participant or participants which revenue is derived in whole or in part from the project financed by the authority;

(d) A first or subordinate security interest against any real or personal property, tangible or intangible, of the participant or participants, including, but not limited to, the project financed by the authority;

(e) Any other real or personal property, tangible or intangible;
or

(f) Any combination of (a) through (e) of this subsection.

Any security interest created against the unexpended bond proceeds and against the special funds created by the authority shall be immediately valid and binding against the moneys and any securities in which the moneys may be invested without authority or trustee

possession, and the security interest shall be prior to any party having any competing claim against the moneys or securities, without filing or recording under Article 9A of the Uniform Commercial Code, Title 62A RCW, and regardless of whether the party has notice of the security interest.

(3) The bonds may be issued as serial bonds or as term bonds or any such combination. The bonds shall bear such date or dates; mature at such time or times; bear interest at such rate or rates, either fixed or variable; be payable at such time or times; be in such denominations; be in such form, either coupon or registered, or both; carry such registration privileges; be made transferable, exchangeable, and interchangeable; be payable in lawful money of the United States of America at such place or places; be subject to such terms of redemption; and be sold at public or private sale, in such manner, at such time, and at such price as the authority shall determine. The bonds shall be executed by the manual or facsimile signatures of the chairperson and the authority's duly-elected secretary or its executive director, and by the trustee if the authority determines to use a trustee. At least one signature shall be manually subscribed. Coupon bonds shall have attached interest coupons bearing the facsimile signatures of the chairperson and the secretary or the executive director.

(4) Any bond resolution, trust indenture, or agreement with a participant relating to bonds issued by the authority or the financing or refinancing made available by the authority may contain provisions, which may be made a part of the contract with the holders or owners of the bonds to be issued, pertaining to the following, among other matters: (a) The security interests granted by the participant to secure repayment of any amounts financed and the performance by the participant of its other obligations in the financing; (b) the security interests granted to the holders or owners of the bonds to secure repayment of the bonds; (c) rentals, fees, and other amounts to be charged, and the sums to be raised in each year through such charges, and the use, investment, and disposition of the sums; (d) the segregation of reserves or sinking funds, and the regulation, investment, and disposition thereof; (e) limitations on the uses of the project; (f) limitations on the purposes to which, or the investments in which, the proceeds of the sale of any issue of bonds may be applied; (g) terms pertaining to the issuance of additional parity bonds; (h) terms pertaining to the incurrence of parity debt; (i) the refunding of outstanding bonds; (j) procedures, if any, by which the terms of any contract with bondholders may be amended or abrogated; (k) acts or failures to act which constitute a default by the participant or the authority in their respective obligations and the rights and remedies in the event of a default; (l) the securing of bonds by a pooling of leases whereby the authority may assign its rights, as lessor, and pledge rents under two or more leases with two or more participants, as lessees; (m) terms governing performance by the trustee of its obligation; or (n) such other additional covenants, agreements, and provisions as are deemed necessary, useful, or convenient by the authority for the security of the holders of the bonds.

(5) Bonds may be issued by the authority to refund other outstanding authority bonds, at or prior to the maturity thereof, and to pay any redemption premium with respect thereto. Bonds issued for such refunding purposes may be combined with bonds issued for the financing or refinancing of new projects. Pending the application of

the proceeds of the refunding bonds to the redemption of the bonds to be redeemed, the authority may enter into an agreement or agreements with a corporate trustee under RCW 28B.07.080 with respect to the interim investment of the proceeds and the application of the proceeds and the earnings on the proceeds to the payment of the principal of and interest on, and the redemption of the bonds to be redeemed.

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

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

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

(9) At no time shall the total outstanding bonded indebtedness of the authority exceed one billion dollars. [2003 c 84 s 1; 1983 c 169 s 5.]

RCW 28B.07.060 Bonds—Special obligations—Payment—Funds—Segregation of proceeds and moneys. Bonds issued under this chapter shall not be deemed to constitute obligations, either general or special, of the state or of any political subdivision of the state, or a pledge of the faith and credit of the state or of any political subdivision, or a general obligation of the authority. The bonds shall be special obligations of the authority and shall be payable solely from the special fund or funds created by the authority in the bond resolution or trust indenture pursuant to which the bonds were issued. The fund or funds shall be funded in whole or in part from moneys paid by one or more participants for whose benefit the bonds were issued, from the sources, if any, under RCW 28B.07.040(9), or from the proceeds of bonds issued by the authority for the purpose of refunding any outstanding bonds of the authority. The issuance of bonds under this chapter shall not obligate, directly, indirectly, or contingently, the state or any political subdivision of the state to levy any taxes or appropriate or expend any funds for the payment of the principal or the interest on the bonds.

Neither the proceeds of bonds issued under this chapter, any moneys used or to be used to pay the principal of or interest on the bonds, nor any moneys received by the authority to defray its administrative costs shall constitute public money or property. All of such moneys shall be kept segregated and set apart from funds of the state and any political subdivision of the state and shall not be subject to appropriation or allotment by the state or subject to the provisions of chapter 43.88 RCW. [1983 c 169 s 6.]

RCW 28B.07.070 Agreements with participant—Participant's payment of certain costs and expenses. In connection with any bonds issued by the authority, the authority shall enter into agreements with participants which shall provide for the payment by each participant of amounts which shall be sufficient, together with other revenues available to the authority, if any, to: (1) Pay the participant's share of the administrative costs and expenses of the

authority; (2) pay the costs of maintaining, managing, and operating the project or projects financed by the authority, to the extent that the payment of the costs has not otherwise been adequately provided for; (3) pay the principal of, premium, if any, and interest on outstanding bonds of the authority issued in respect of such project or projects as the same shall become due and payable; and (4) create and maintain reserves required or provided for in any bond resolution or trust indenture authorizing the issuance of such bonds of the authority. The payments shall not be subject to supervision or regulation by any department, committee, board, body, bureau, or agency of the state other than the authority. [1983 c 169 s 7.]

RCW 28B.07.080 Moneys deemed trust funds—Agreement or trust indenture with bank or trust company authorized. All moneys received by or on behalf of the authority under this chapter, whether as proceeds from the sale of bonds or from participants or from other sources shall be deemed to be trust funds to be held and applied solely as provided in this chapter. The authority, in lieu of receiving and applying the moneys itself, may enter into an agreement or trust indenture with one or more banks or trust companies having the power and authority to conduct trust business in the state to:

(1) Perform all of any part of the obligations of the authority with respect to: (a) Bonds issued by it; (b) the receipt, investment, and application of the proceeds of the bonds and moneys paid by a participant or available from other sources for the payment of the bonds; (c) the enforcement of the obligations of a participant in connection with the financing or refinancing of any project; and (d) other matters relating to the exercise of the authority's powers under this chapter;

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

(3) Act on behalf of the authority or the holders or owners of bonds of the authority for purposes of assuring or enforcing the payment of the bonds, when due. [1983 c 169 s 8.]

RCW 28B.07.090 Holders or owners of bonds—Trustees—Enforcement of rights—Purchase at foreclosure sale. Any holder or owner of bonds of the authority issued under this chapter or any holder of the coupons appertaining to the bonds, and the trustee or trustees under any trust indenture, except to the extent the rights given are restricted by the authority in any bond resolution or trust indenture authorizing the bonds, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any of their respective rights, and may become the purchaser at any foreclosure sale if the person is the highest bidder. [1983 c 169 s 9.]

RCW 28B.07.100 Bonds are securities—Legal investments. The bonds of the authority are securities in which all public officers and bodies of this state and all counties, cities, municipal corporations, and political subdivisions, all banks, bankers, trust companies, savings banks and institutions, building and loan associations,

savings and loan associations, investment companies, insurance companies and associations, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control. [1983 c 169 s 10.]

RCW 28B.07.110 Projects or financing—Exemption from certain restrictions on procedures for awarding contracts. A project or the financing or refinancing thereof pursuant to this chapter shall not be subject to the requirements of any law or rule relating to competitive bidding, lease performance bonds, or other restrictions imposed on the procedure for award of contracts. [1983 c 169 s 11.]

RCW 28B.07.120 Bond counsel—Selection. (1) The authority shall adopt written policies to provide for the selection of bond counsel. The policies shall provide for the creation and maintenance of a roster of attorneys whom the authority believes possess the requisite special expertise and professional standing to provide bond counsel opinions which would be accepted by the underwriters, bondholders and other members of the financial community, and which would be in furtherance of the public interest in obtaining the lowest possible interest rates on the bonds issued by the authority. Any attorney may apply to have his or her name placed on the roster, but may not be placed on the roster unless the attorney demonstrates to the authority's satisfaction that the attorney would issue the kind of opinions required by this section.

(2) Prior to selecting an attorney or attorneys to provide bond counsel services, the authority shall provide all attorneys on the roster with a notice of its intentions to select bond counsel and shall invite each of them to submit to the authority his or her fee schedule for providing bond counsel services. The authority shall have wide discretion in selecting the attorney or attorneys it considers to be most appropriate to provide the services, but in the exercise of this discretion the authority shall consider all submitted fee schedules and the public interest in achieving issuance of bonds on terms most favorable to the authority. At least once every two calendar years, the authority shall select anew an attorney or attorneys to serve as bond counsel. However, the authority may retain an attorney for longer than two years when necessary to complete work on a particular bond issue. An attorney previously retained may be selected again but only after the authority has provided other attorneys on the roster with an opportunity to be selected and has made the fee schedule review required under this subsection. As an alternative to retaining counsel for a period of time, the authority may appoint an attorney to serve as counsel in respect to only a particular bond issue or issues. [1983 c 169 s 13.]

RCW 28B.07.130 Underwriters—Selection. (1) The authority shall adopt written policies to provide for the selection of underwriters. The policies shall provide for the creation of a roster of underwriters who the authority believes possess the requisite special expertise and professional standing to provide bond marketing services which would be accepted by bondholders and other members of the

financial community, and which would be in furtherance of the public interest in marketing the authority's bonds at the lowest possible costs. Any underwriter may apply to have its name placed on the roster, but may not be placed on the roster unless it demonstrates to the authority's satisfaction that it meets the requirements of this section.

(2) Whenever the authority decides that it needs the services of an underwriter, it shall provide all underwriters on the roster with a notice of its intentions and shall invite each of them to submit to the authority an itemization of its fees and other charges for providing underwriting services on the issue. The itemization shall be by categories designed by the authority. The authority shall have wide discretion in selecting the underwriter it considers to be most appropriate to provide the services, but in the exercise of this discretion the authority shall consider the underwriter's fees and other charges and the public interest in achieving issuance of bonds on terms most favorable to the authority. The authority may adopt rules setting forth conditions under which an institution of higher education may be permitted to exercise the notice and selection procedures set forth in this subsection. These rules shall require the institution to comply with the provisions of this subsection as if it were the authority and to obtain the authority's prior approval of the selection of an underwriter. [1983 c 169 s 14.]

STUDENT LOAN FINANCING

RCW 28B.07.300 Student loan financing—Authority—Liability. (1)

In addition to its existing powers, the authority has the following powers with respect to student loan financing:

- (a) To originate and purchase educational loans;
- (b) To issue revenue bonds payable from and secured by educational loans;
- (c) To execute financing documents in connection with such educational loans and bonds;
- (d) To adopt rules in accordance with chapter 34.05 RCW;
- (e) To participate fully in federal programs that provide guaranties for the repayment of educational loans and do all things necessary, useful, or convenient to make such programs available in the state and carry out the purposes of this chapter;
- (f) To contract with an agency, financial institution, or corporation, whether organized under the laws of this state or otherwise, whereby such agency, financial institution, or corporation shall provide billing, accounting, reporting, or administrative services required for educational loan programs administered by the authority or in which the authority participates; and
- (g) To form one or more nonprofit special purpose corporations for accomplishing the purposes set forth in this chapter. The authority may contract with any such nonprofit corporation, as set forth in (f) of this subsection.

(2) In the exercise of any of these powers, the authority shall incur no expense or liability that shall be an obligation, either general or special, of the state, and shall pay no expense or liability from funds other than funds of the authority. Funds of the

state may not be used for such purpose unless appropriated for such purpose. [2007 c 36 s 3.]

Policy—Purpose—2007 c 36: "It is the public policy of the state and a recognized governmental function to facilitate student loan financing and thereby increase access to higher education for Washington's citizens. The purpose of this act is to bring to the citizens of the state the applicable advantages of federal tax law and federal loan guaranties and to authorize the Washington higher education facilities authority to originate and acquire educational loans and to issue nonrecourse revenue bonds to be paid from such loans." [2007 c 36 s 1.]

RCW 28B.07.310 Administration of alternative state educational loans. The authority, in addition to administering federal loan programs, may administer an alternative state educational loan program that may include the purchase or origination of alternative state educational loans with terms as determined by the authority. These loans are not guaranteed by the state and the proceeds from loan repayment including interest or other loan-related payments or authority or contractor revenue may be used by the authority to make any required payments to bondholders. [2007 c 36 s 4.]

Policy—Purpose—2007 c 36: See note following RCW 28B.07.300.

RCW 28B.07.320 Revenue bonds—Issuance—Payment—Personal liability. (1) The authority may, from time to time, issue revenue bonds in order to carry out the purposes of this chapter.

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

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

(4) The bonds may be issued as serial bonds or as term bonds or any such combination. The bonds shall bear such date or dates; mature at such time or times; bear interest at such rate or rates, either fixed or variable; be payable at such time or times; be in such denominations; be in such form; carry such registration privileges; be made transferable, exchangeable, and interchangeable; be payable in lawful money of the United States of America at such place or places; be subject to such terms of redemption; and be sold at public or private sale, in such manner, at such time, and at such price as the authority shall determine. The bonds shall be executed by the manual

or facsimile signatures of the chairperson and the authority's duly elected secretary or its executive director, and by the trustee if the authority determines to use a trustee. At least one signature shall be manually subscribed.

(5) Any bond resolution, trust indenture, or other financing document may contain provisions, which may be made a part of the contract with the holders or owners of the bonds to be issued, pertaining to the following, among other matters: (a) The security interests granted to the holders or owners of the bonds to secure repayment of the bonds; (b) the segregation of reserves or sinking funds, and the regulation, investment, and disposition thereof; (c) limitations on the purposes to which, or the investments in which, the proceeds of the sale of any issue of bonds may be applied; (d) terms pertaining to the issuance of additional parity bonds; (e) the refunding of outstanding bonds; (f) procedures, if any, by which the terms of any contract with bondholders may be amended or abrogated; (g) events of default as well as rights and remedies in the event of a default including without limitation the right to declare all principal and interest immediately due and payable; (h) terms governing performance by the trustee of its obligation; or (i) such other additional covenants, agreements, and provisions as are deemed necessary, useful, or convenient by the authority for the security of the holders of the bonds.

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

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

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

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

(10) Neither the proceeds of bonds issued under this chapter, any moneys used or to be used to pay the principal of or interest on the bonds, nor any moneys received by the authority to defray its administrative costs shall constitute public money or property. All of such moneys shall be kept segregated and set apart from funds of the state and any political subdivision of the state and shall not be subject to appropriation or allotment by the state or subject to the provisions of chapter 43.88 RCW. [2007 c 36 s 5.]

Policy—Purpose—2007 c 36: See note following RCW 28B.07.300.

RCW 28B.07.330 Revenue refunding bonds. Bonds may be issued by the authority to refund other outstanding bonds issued pursuant to this chapter, at or prior to the maturity thereof, and to pay any redemption premium with respect thereto. Bonds issued for such refunding purposes may be combined with bonds issued for the origination or purchase of educational loans. Pending the application of the proceeds of the refunding bonds to the redemption of the bonds to be redeemed, the authority may enter into an agreement or agreements with a corporate trustee with respect to the interim investment of the proceeds and the application of the proceeds and the earnings on the proceeds to the payment of the principal of and interest on, and the redemption of the bonds to be redeemed. [2007 c 36 s 6.]

Policy—Purpose—2007 c 36: See note following RCW 28B.07.300.

RCW 28B.07.340 Trust funds—Trust agreements. All moneys received by or on behalf of the authority under this chapter, whether as proceeds from the sale of bonds or from other sources shall be deemed to be trust funds to be held and applied solely as provided in this chapter. The authority, in lieu of receiving and applying the moneys itself, may enter into an agreement or trust indenture with one or more banks or trust companies having the power and authority to conduct trust business in the state to:

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

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

(3) Act on behalf of the authority or the holders or owners of bonds of the authority for purposes of assuring or enforcing the payment of the bonds, when due. [2007 c 36 s 7.]

Policy—Purpose—2007 c 36: See note following RCW 28B.07.300.

RCW 28B.07.350 Proceeds fund. (1) All proceeds derived from a particular bond under the provisions of this chapter shall be deposited in a fund to be known as the proceeds fund, which shall be maintained in such bank or banks as shall be determined by the authority. Proceeds deposited in the fund shall be expended only on approval of the authority.

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

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

(a) The payment of the necessary expenses, including, without limitation, the costs of issuing the authority's bonds, incurred by the authority in carrying out its responsibilities under RCW 28B.07.021, 28B.07.300 through 28B.07.380, 28B.07.925, 28B.07.927, and 28B.07.030;

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

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

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

(e) The acquisition of an investment contract or contracts or any other investments permitted under an indenture of the authority securing its bonds. The income from the contract, contracts, or investments, after payment of the bonds and all expenses associated therewith, shall be used by the authority to assist in carrying out its purposes under this chapter. [2007 c 36 s 8.]

Policy—Purpose—2007 c 36: See note following RCW 28B.07.300.

RCW 28B.07.360 Default. The proceedings authorizing any revenue obligations under this chapter or any financing document securing the revenue bonds may provide that if there is a default in the payment of the principal of or the interest on the bonds or in the performance of any agreement contained in the proceedings or financing document, the payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to collect revenues in accordance with the proceedings or provisions of the financing document. [2007 c 36 s 9.]

Policy—Purpose—2007 c 36: See note following RCW 28B.07.300.

RCW 28B.07.370 Debt limitation. Bonds issued by the authority under this chapter shall not be subject to the debt limitation set forth in RCW 28B.07.050(9). [2007 c 36 s 11.]

Policy—Purpose—2007 c 36: See note following RCW 28B.07.300.

RCW 28B.07.380 Sale of assets. The authority is authorized to offer for sale from time to time loan portfolios or other assets accumulated by the authority. Sales shall be conducted in a competitive manner and shall be approved by the authority board. [2007 c 36 s 12.]

Policy—Purpose—2007 c 36: See note following RCW 28B.07.300.

CONSTRUCTION

RCW 28B.07.900 Chapter supplemental—Application of other laws. This chapter provides a complete, additional, and alternative method for accomplishing the purposes of this chapter and shall be regarded as supplemental and additional to powers conferred by other laws. The issuance of bonds and refunding bonds under this chapter need not comply with the requirements of any other law applicable to the issuance of bonds. [1983 c 169 s 15.]

RCW 28B.07.910 Construction—1983 c 169. This chapter, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect its purposes. Insofar as the provisions of this chapter are inconsistent with the provisions of any general or special law, or parts thereof, the provisions of this chapter shall be controlling. [1983 c 169 s 16.]

RCW 28B.07.925 Chapter supplemental—Application of other laws. This chapter shall be regarded as supplemental and additional to the powers conferred on the authority by other laws. The issuance of bonds and refunding bonds under this chapter need not comply with requirements of any other laws applicable to the issuance of bonds. [2007 c 36 s 13.]

RCW 28B.07.926 Construction—2007 c 36. This act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes thereof. [2007 c 36 s 15.]

RCW 28B.07.927 Conflict with federal requirements—2007 c 36. If any part of this act is found to be in conflict with federal requirements under the higher education act of 1965, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition for participation of a state agency under the higher education act of 1965, or its successor. [2007 c 36 s 10.]