

Chapter 70A.210 RCW
POLLUTION CONTROL—MUNICIPAL BONDING AUTHORITY

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RCW 70A.210.010 Legislative declaration—Liberal construction.

The legislature finds:

(1) That environmental damage seriously endangers the public health and welfare;

(2) That such environmental damage results from air, water, and other resources pollution and from solid waste disposal, noise and other environmental problems;

(3) That to abate or control such environmental damage antipollution devices, equipment, and facilities must be acquired, constructed and installed;

(4) That the tax exempt financing permitted by Section 103 of the Internal Revenue Code of 1954, as amended, and authorized by this chapter results in lower costs of installation of pollution control facilities;

(5) That such lower costs benefit the public with no measurable cost impact;

(6) That the method of financing provided in this chapter is in the public interest and its use serves a public purpose in (a) protecting and promoting the health and welfare of the citizens of the cities, towns, counties, and port districts and of this state by encouraging and accelerating the installation of facilities for abating or controlling and preventing environmental damage and (b) in attracting and retaining environmentally sound industry in this state which reduces unemployment and provides a more diversified tax base.

(7) For the reasons set forth in subsection (6) of this section, the provisions of this chapter relating to port districts and all proceedings heretofore or hereafter taken by port districts pursuant thereto are, and shall be deemed to be, for industrial development as

authorized by Article 8, section 8 of the Washington state Constitution.

This chapter shall be liberally construed to accomplish the intentions expressed in this section. [1975 c 6 s 1; 1973 c 132 s 2. Formerly RCW 70.95A.010.]

RCW 70A.210.020 Definitions. As used in this chapter, unless the context otherwise requires:

- (1) "Department" shall mean the state department of ecology;
- (2) "Facility" or "facilities" shall mean any land, building, structure, machinery, system, fixture, appurtenance, equipment or any combination thereof, or any interest therein, and all real and personal properties deemed necessary in connection therewith whether or not now in existence, which is used or to be used by any person, corporation or municipality in furtherance of the purpose of abating, controlling or preventing pollution;
- (3) "Governing body" shall mean the body or bodies in which the legislative powers of the municipality are vested;
- (4) "Mortgage" shall mean a mortgage or a mortgage and deed of trust or other security device;
- (5) "Municipality" shall mean any city, town, county, port district, or water-sewer district in the state; and
- (6) "Pollution" shall mean any form of environmental pollution, including but not limited to water pollution, air pollution, land pollution, solid waste disposal, thermal pollution, radiation contamination, or noise pollution. [2017 c 314 s 3; 1973 c 132 s 3. Formerly RCW 70.95A.020.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

RCW 70A.210.030 Municipalities—Powers. In addition to any other powers which it may now have, each municipality shall have the following powers:

- (1) To acquire, whether by construction, purchase, devise, gift or lease, or any one or more of such methods, one or more facilities which shall be located within, or partially within the municipality;
- (2) To lease, lease with option to purchase, sell or sell by installment sale, any or all of the facilities upon such terms and conditions as the governing body may deem advisable but which shall at least fully reimburse the municipality for all debt service on any bonds issued to finance the facilities and for all costs incurred by the municipality in financing and operating the facilities and as shall not conflict with the provisions of this chapter;
- (3) To issue revenue bonds for the purpose of defraying the cost of acquiring or improving any facility or facilities or refunding any bonds issued for such purpose and to secure the payment of such bonds as provided in this chapter. Revenue bonds may be issued in one or more series or issues where deemed advisable, and each such series or issue may have the same or different maturity dates, interest rates, priorities on revenues available for payment of such bonds and priorities on security available for assuring payment thereof, and such other differing terms and conditions as are deemed necessary and are not in conflict with the provisions of this chapter. [1973 c 132 s 4. Formerly RCW 70.95A.030.]

RCW 70A.210.040 Actions by municipalities validated. All actions heretofore taken by any municipality in conformity with the provisions of this chapter and the provisions of chapter 6, Laws of 1975 hereby made applicable thereto relating to pollution control facilities, including but not limited to all bonds issued for such purposes, are hereby declared to be valid, legal and binding in all respects. [1975 c 6 s 4. Formerly RCW 70.95A.035.]

Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.

RCW 70A.210.050 Municipalities—Revenue bonds for pollution control facilities—Authorized—Construction—Sale, conditions—Form, terms. (1) All bonds issued by a municipality under the authority of this chapter shall be secured solely by revenues derived from the lease or sale of the facility. Bonds and any interest coupons issued under the authority of this chapter shall not constitute nor give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers. Such limitation shall be plainly stated upon the face of each of such bonds. The use of the municipality's name on revenue bonds authorized hereunder shall not be construed to be the giving or lending of the municipality's financial guarantee or pledge, i.e. credit to any private person, firm, or corporation as the term credit is used in Article 8, section 7 of the Washington state Constitution.

(2) The bonds referred to in subsection (1) of this section, may (a) be executed and delivered at any time and from time to time, (b) be in such form and denominations, (c) be of such tenor, (d) be in bearer or registered form either as to principal or interest or both, as provided in RCW 39.46.030, and may provide for conversion between registered and coupon bonds of varying denominations, (e) be payable in such installments and at such time or times not exceeding forty years from their date, (f) be payable at such place or places, (g) bear interest at such rate or rates as may be determined by the governing body, payable at such place or places within or without this state and evidenced in such manner, (h) be redeemable prior to maturity, with or without premium, and (i) contain such provisions not inconsistent herewith, as shall be deemed for the best interest of the municipality and provided for in the proceedings of the governing body whereunder the bonds shall be authorized to be issued.

(3) Any bonds issued under the authority of this chapter, may be sold at public or private sale in such manner and at such time or times as may be determined by the governing body to be most advantageous. The municipality may pay all expenses, premiums and commissions which the governing body may deem necessary or advantageous in connection with the authorization, sale and issuance thereof from the proceeds of the sale of said bonds or from the revenues of the facilities.

(4) All bonds issued under the authority of this chapter, and any interest coupons applicable thereto shall be investment securities within the meaning of the uniform commercial code and shall be deemed to be issued by a political subdivision of the state.

(5) The proceeds from any bonds issued under this chapter shall be used only for purposes qualifying under Section 103(c)(4)(f) of the Internal Revenue Code of 1954, as amended.

(6) Notwithstanding subsections (2) and (3) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 s 174; 1975 c 6 s 3; 1973 c 132 s 5. Formerly RCW 70.95A.040.]

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

Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.

RCW 70A.210.060 Proceeds of bonds are separate trust funds—Municipal treasurer, compensation. The proceeds of any bonds heretofore or hereafter issued in conformity with the authority of this chapter, together with interest and premiums thereon, and any revenues used to pay or redeem any of such bonds, together with interest and any premiums thereon, shall be separate trust funds and used only for the purposes permitted herein and shall not be considered to be money of the municipality. The services of the treasurer of a municipality, if such treasurer is or has been used, were and are intended to be for the administrative convenience of receipt and payment of nonpublic moneys only for which reasonable compensation may be charged by such treasurer or municipality. [1975 c 6 s 2. Formerly RCW 70.95A.045.]

Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.

RCW 70A.210.070 Revenue bonds—Security—Scope—Default—Authorization proceedings. (1) The principal of and interest on any bonds issued under the authority of this chapter (a) shall be secured by a pledge of the revenues derived from the sale or lease of the facilities out of which such bonds shall be made payable, (b) may be secured by a mortgage covering all or any part of the facilities, (c) may be secured by a pledge or assignment of the lease of such facilities, or (d) may be secured by a trust agreement or such other security device as may be deemed most advantageous by the governing body.

(2) The proceedings under which the bonds are authorized to be issued under the provisions of this chapter, and any mortgage given to secure the same may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting (a) the fixing and collection of rents for any facilities covered by such proceedings or mortgage, (b) the terms to be incorporated in the lease of such facilities, (c) the maintenance and insurance of such facilities, (d) the creation and maintenance of special funds from the revenues of such facilities, and (e) the rights and remedies available in the event of a default to the bond owners or to the trustee under a mortgage or trust agreement, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of this chapter: PROVIDED, That in making any such agreements or provisions a municipality shall not have the power to obligate itself except with respect to the facilities and the application of the revenues

therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

(3) The proceedings authorizing any bonds under the provisions of this chapter and any mortgage securing such bonds may provide that, in the event of a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or mortgage, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the facilities in accordance with such proceedings or the provisions of such mortgage.

(4) Any mortgage made under the provisions of this chapter, to secure bonds issued thereunder, may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and the mortgaged property sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the owner of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor. No breach of any such agreement shall impose any pecuniary liability upon a municipality or any charge upon their general credit or against their taxing powers.

(5) The proceedings authorizing the issuance of bonds hereunder may provide for the appointment of a trustee or trustees for the protection of the owners of the bonds, whether or not a mortgage is entered into as security for such bonds. Any such trustee may be a bank with trust powers or a trust company and shall be located in the United States, within or without the state of Washington, shall have the immunities, powers and duties provided in said proceedings, and may, to the extent permitted by such proceedings, hold and invest funds deposited with it in direct obligations of the United States, obligations guaranteed by the United States or certificates of deposit of a bank (including the trustee) which are continuously secured by such obligations of or guaranteed by the United States. Any bank acting as such trustee may, to the extent permitted by such proceedings, buy bonds issued hereunder to the same extent as if it were not such trustee. Said proceedings may provide for one or more co-trustees, and any co-trustee may be any competent individual over the age of twenty-one years or a bank having trust powers or trust company within or without the state. The proceedings authorizing the bonds may provide that some or all of the proceeds of the sale of the bonds, the revenues of any facilities, the proceeds of the sale of any part of a facility, of any insurance policy or of any condemnation award be deposited with the trustee or a co-trustee and applied as provided in said proceedings. [1983 c 167 s 175; 1973 c 132 s 6. Formerly RCW 70.95A.050.]

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

RCW 70A.210.080 Facilities—Leases authorized. Prior to the issuance of the bonds authorized by this chapter, the municipality may lease the facilities to a lessee or lessees under an agreement providing for payment to the municipality of such rentals as will be sufficient (a) to pay the principal of and interest on the bonds

issued to finance the facilities, (b) to pay the taxes on the facilities, (c) to build up and maintain any reserves deemed by the governing body to be advisable in connection therewith, and (d) unless the agreement of lease obligates the lessees to pay for the maintenance and insurance of the facilities, to pay the costs of maintaining the facilities in good repair and keeping the same properly insured. Subject to the limitations of this chapter, the lease or extensions or modifications thereof may contain such other terms and conditions as may be mutually acceptable to the parties, and notwithstanding any other provisions of law relating to the sale of property owned by municipalities, such lease may contain an option for the lessees to purchase the facilities on such terms and conditions with or without consideration as may be mutually acceptable to the parties. [1973 c 132 s 7. Formerly RCW 70.95A.060.]

RCW 70A.210.090 Facilities—Revenue bonds—Refunding provisions.

Any bonds issued under the provisions of this chapter and at any time outstanding may at any time and from time to time be refunded by a municipality by the issuance of its refunding bonds in such amount as the governing body may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds to be so refunded, together with any unpaid interest thereon and any premiums and commissions necessary to be paid in connection therewith: PROVIDED, That an issue of refunding bonds may be combined with an issue of additional revenue bonds on any facilities. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby: PROVIDED FURTHER, That the owners of any bonds to be so refunded shall not be compelled without their consent to surrender their bonds for payment or exchange except on the terms expressed on the face thereof. Any refunding bonds issued under the authority of this chapter shall be subject to the provisions contained in RCW 70A.210.050 and may be secured in accordance with the provisions of RCW 70A.210.070. [2020 c 20 s 1205; 1983 c 167 s 176; 1973 c 132 s 8. Formerly RCW 70.95A.070.]

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

RCW 70A.210.100 Revenue bonds—Disposition of proceeds. The proceeds from the sale of any bonds issued under authority of this chapter shall be applied only for the purpose for which the bonds were issued: PROVIDED, That any accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold: AND PROVIDED FURTHER, That if for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such unneeded portion of said proceeds shall be applied to the payment of the principal of or the interest on said bonds. The cost of acquiring or improving any facilities shall be deemed to include the following: The actual cost of acquiring or improving real estate for any facilities; the actual cost of construction of all or any part of the facilities which may be

constructed, including architects' and engineers' fees, all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition or improvements; and the interest on such bonds for a reasonable time prior to construction, during construction, and for a time not exceeding six months after completion of construction. [1973 c 132 s 9. Formerly RCW 70.95A.080.]

RCW 70A.210.110 Facilities—Sale or lease—Certain restrictions on municipalities not applicable. The facilities shall be constructed, reconstructed, and improved and shall be leased, sold or otherwise disposed of in the manner determined by the governing body in its sole discretion and any requirement of competitive bidding, lease performance bonds or other restriction imposed on the procedure for award of contracts for such purpose or the lease, sale or other disposition of property of a municipality is not applicable to any action taken under authority of this chapter. [1973 c 132 s 10. Formerly RCW 70.95A.090.]

RCW 70A.210.120 Facilities—Department of ecology certification. Upon request by a municipality or by a user of the facilities the department of ecology may in relation to chapter 54, Laws of 1972 ex. sess. and this chapter issue its certificate stating that the facilities (1) as designed are in furtherance of the purpose of abating, controlling or preventing pollution, and/or (2) as designed or as operated meet state and local requirements for the control of pollution. This section shall not be construed as modifying the provisions of RCW 82.34.030; chapter 70A.15 RCW; or chapter 90.48 RCW. [2020 c 20 s 1206; 1973 c 132 s 11. Formerly RCW 70.95A.100.]

RCW 70A.210.900 Construction—1973 c 132. Nothing in this chapter shall be construed as a restriction or limitation upon any powers which a municipality might otherwise have under any laws of this state, but shall be construed as cumulative. [1973 c 132 s 12. Formerly RCW 70.95A.910.]

RCW 70A.210.901 Construction—1975 c 6. This 1975 amendatory act shall be liberally construed to accomplish the intention expressed herein. [1975 c 6 s 6. Formerly RCW 70.95A.912.]

Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.

RCW 70A.210.902 Acquisitions by port districts under RCW 53.08.040—Prior rights or obligations. All acquisitions by port districts pursuant to RCW 53.08.040 may, at the option of a port commission, be deemed to be made under this chapter, or under both: PROVIDED, That nothing contained in this chapter shall impair rights or obligations under contracts entered into before March 19, 1973. [1973 c 132 s 14. Formerly RCW 70.95A.930.]