



# King County

## Metropolitan King County Council General Government and Labor Relations Committee

### Staff Report

---

**Agenda Item No.:** 3

**Date:** 28 August 2007

**Ordinance No.:** 2007-0441

**Prepared by:** Nick Wagner

---

#### **SUBJECT**

AN ORDINANCE that would meet the requirements of certain IRS regulations governing the issuance of tax-exempt bonds for a not-for-profit educational institution located in Kirkland, Washington.

#### **SUMMARY**

Northwest University (“Northwest”), a Washington nonprofit corporation located at 5520 108th Avenue NE, Kirkland, Washington, is organizing an issuance of \$35 million in tax-exempt bonds. The bonds will be issued on behalf of Northwest by a governmental entity in Colorado. Through Proposed Ordinance 2007-0441 (Attachment 1 to this staff report), King County would approve the bond issuance. Such approval, following a public hearing, is required by Internal Revenue Service (“IRS”) regulations in order for the bond issue to be tax-exempt. This action by the Council would have no significant financial impact on the County.

#### **BACKGROUND**

The Council approved a similar ordinance in 2005. That ordinance, number 15283, approved the issuance of \$15 million in tax-exempt bonds for Bear Creek School, which is located in Redmond, Washington, and describes itself as “[a]n independent, Christian, college preparatory, co-educational day school.”

Northwest University describes itself as “a regionally-accredited, Christian coeducational institution awarding associate, baccalaureate, and master’s degrees.” Northwest is organizing \$35 million in financing in order to finance the costs of, or refinance, existing indebtedness of Northwest and/or its affiliates, the proceeds of which were used to finance the costs of acquisition, construction, improvement, renovation, remodeling, furnishing, and equipping of higher education facilities of Northwest, including but not limited to the construction of new student residence halls, faculty housing, and a new health and sciences center, all located on the Northwest campus in Kirkland, Washington (the “Facilities”). The proceeds of the bonds will be loaned to ACSI Capital Corporation, which will loan the proceeds to Northwest, which will continue to be the owner and operator of the Facilities.

In order to lower its financing costs, Northwest would like to finance these projects with the issuance of tax-exempt bonds, since they typically carry lower financing costs than other bonds. This is because the bond holders do not pay income tax on the interest they earn and thus are willing to accept a lower interest rate.

The issuance of tax-exempt bonds for private, not-for-profit purposes is governed by IRS regulations, which require that:

1. The bonds be issued on behalf of the not-for-profit organization by a local governmental unit. In this case, Northwest is contracting with a public entity in Colorado, which will issue the bonds.
2. The bond issuance be approved by both the governmental entity issuing the bonds (i.e., the Colorado entity) and the governmental entity with jurisdiction over the physical location of the facilities to be funded by the bonds (i.e., King County).
3. The public be given reasonable notice and a public hearing be held in the locale where the funds from the bond issue will be expended (again, King County).

## **ANALYSIS**

Proposed Ordinance 2007-0441 would approve the issuance of the bonds and thereby meet the second IRS requirement listed above. As detailed in Section 2 of the ordinance, adoption of the ordinance and approval of the bonds by the Council is an action that will have no significant financial impact on the County. In addition, the County is protected against liabilities and obligations (except for gross negligence or criminal misconduct) with respect to the bond issue by a written indemnification agreement between the County and Northwest (Attachment 4 to this staff report, which has been executed by Northwest, though not yet by the Council).

Both the ordinance and the agreement are similar to those that were approved in connection with Ordinance 15283 (approving the bond issuance for Bear Creek School in 2005), and the differences do not appear at this time to be a cause for concern; however, due to the short time frame within which the Council is being asked to approve the bonds for Northwest, the Council's attorney had not yet completed his review by the time this staff report was prepared for distribution to members of the committee.

The Council Clerk has published notice (Attachment 3 to this report) of a public hearing on the bond issue to be held before the Council on Monday, September 4, which would fulfill the third IRS requirement listed above. Should the Committee report this ordinance out of committee today, the ordinance will be scheduled for final action before the full Council concurrent with the public hearing.

If the Council were not to approve the ordinance after a public hearing, Northwest would be unable to proceed with its plans to obtain financing through issuance of tax-exempt bonds. The alternative for Northwest would be to arrange other financing, likely at a higher cost, such as through the issuance of taxable bonds.

## **AMENDMENT**

Proposed Amendment A1 (Attachment 2 to this staff report) would make minor changes proposed by King County's bond counsel. The effect of the proposed changes is described in the Effect statement for the amendment.

## **REASONABLENESS**

As this action has no significant financial impact on the County, passage of this ordinance would constitute a reasonable decision by the Council.

## **INVITEES**

1. Dan Neary, Executive Vice President, Northwest University
2. Daniel Ichinaga, Attorney for Northwest University

## **ATTACHMENTS**

1. Proposed Ordinance 2007-0441 (p. 5)
2. Amendment A1 (p. 9)
3. Notice of Public Hearing (p. 11)
4. Tax Equity and Fiscal Responsibility Act ("TEFRA") Agreement Between Northwest University and King County (proposed draft) (p. 13)





Signature Report

August 27, 2007

Ordinance

Proposed No. 2007-0441.1

Sponsors Hague

1 AN ORDINANCE approving the issuance of bonds in an  
2 aggregate amount not to exceed \$35,000,000.00 by the  
3 Colorado Educational and Cultural Facilities Authority for  
4 the Northwest University Project.

5  
6 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

7 SECTION 1. Findings:

8 A. Northwest University, a Washington nonprofit corporation located at 5520  
9 108th Ave NE, Kirkland, WA 98033 (the "Corporation") has requested the Colorado  
10 Educational and Cultural Facilities Authority (the "Issuer") to issue its Adjustable Rate  
11 Demand Revenue Bonds, Series 2007 (Northwest University Project), in the aggregate  
12 principal amount of approximately \$35,000,000 (the "Bonds").

13 B. The proceeds of the Bonds will be used for the purposes of:

14 1. Financing the costs of, or refinancing certain existing indebtedness of the  
15 Corporation and/or its affiliates, the proceeds of which indebtedness were used to finance  
16 the costs of the acquisition, construction, improvement, renovation, remodeling,  
17 furnishing and equipping of certain higher educational facilities of the Corporation,

18 including but not limited to the construction of new student residence halls, faculty  
19 housing, and a new health and sciences center, all located on the campus of the  
20 Corporation in Kirkland, Washington the "Facilities"). (The proceeds of the Bonds will  
21 be loaned to ACSI Capital Corporation which will in turn loan the proceeds to the  
22 Corporation and the Corporation will continue to be the owner, operator and manager of  
23 the Facilities.);

- 24 2. Funding capitalized interest on a portion of the Bonds, if any;
- 25 3. Funding a debt service reserve fund, if required; and
- 26 4. Paying certain costs of issuance of the Bonds, including initial costs of any  
27 credit enhancement.

28 C. In order to achieve interest savings, the Corporation desires that the Bonds be  
29 issued in compliance with the requirement of the Internal Revenue Code of 1986, as  
30 amended (the "Code") so that interest on the Bonds will be excludable from the gross  
31 income of the holders.

32 D. Section 147 (f) of the Code requires, as a condition to receiving tax-exempt  
33 treatment of the interest on the Bonds, that a governmental unit having jurisdiction over  
34 the area in which the Facilities are located approve the Bonds and the metropolitan King  
35 County council of the state of Washington (the "Council") constitutes such an authorized  
36 governmental unit.

37 E. Official notice was duly advertised for the public hearing on this ordinance,  
38 which was held on September 4, 2007.

39 F. The council deems it necessary and advisable that this ordinance be enacted.

40            SECTION 2. A. The issuance of the Bonds by the Issuer in an aggregate amount  
41 not to exceed \$35,000,000.00 is hereby approved.

42            B. This approval is solely for the purposes of Section 147 (f) of the Internal  
43 Revenue Code of 1986, and King County shall have no liabilities for the issuance or  
44 payment of the Bonds nor shall any of its assets be pledged to the payment of the Bonds.

45            C. The bonds shall not constitute an obligation of the state of Washington or of  
46 King County, and no tax funds or revenues of the state of Washington or of King County  
47 shall be used to pay the principal or interest on the bonds. Neither the faith and credit nor  
48 any taxing power of the state of Washington or of King County shall be pledged to pay  
49 the principal or interest on the bonds; and

50            D. King County's approval of the bond issuance shall not constitute county  
51 approval or disapproval of any other permits, certifications or actions or waive any of the

**Ordinance**

---

52 permitting, environmental review, financial obligations or legal requirements applicable  
53 to the project.

54

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

---

ATTEST:

---

APPROVED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

---

**Attachments**      None



August 28, 2007

**A1**

nw

Sponsor: Hague

Proposed No.: 2007-0441

1 **AMENDMENT TO PROPOSED ORDINANCE 2007-0441, VERSION 1**

2 On page 2, line 20, insert "(" before "the Facilities".

3 On page 2, line 39, delete "council deems it necessary and advisable that this ordinance  
4 be enacted" and insert " Corporation and the Issuer have requested that the council enact  
5 this ordinance".

6 On page 3, line 43, insert ", or in connection with," after "liabilities for".

7 On page 4, line 53, delete "project" and insert "Facilities".

8 **EFFECT: The changes at page 2, line 20, and page 4, line 53, are non-substantive.**

9 **The change at page 2, line 39, more accurately reflects the background of the**  
10 **proposed ordinance. The change at page 3, line 43, makes clear that King County is**  
11 **assuming no liability in connection with the issuance or payment of the bonds.**



METROPOLITAN KING COUNTY COUNCIL  
NOTICE OF HEARING  
Proposed Ordinance 2007-0441

NOTICE IS HEREBY GIVEN that a public hearing will be held before the Metropolitan King County Council, Room 1001, King County Courthouse, Seattle, Washington, on the 4th day of September, 2007, at 1:30 p.m. to consider adoption of Proposed Ordinance 2007-0441.

SUMMARY

Proposed Ordinance 2007-0441 is an ordinance approving the proposed issuance by the Colorado Educational and Cultural Facilities Authority (the "Authority") of its Adjustable Rate Demand Revenue Bonds, Series 2007 (Northwest University Project), in the aggregate principal amount of approximately \$35,000,000 (the "Bonds") for the purposes of: (a) financing the costs of, or refinancing certain indebtedness of Northwest University, a Washington nonprofit corporation (the "Corporation") and/or its affiliates, the proceeds of which indebtedness were used to finance the costs of, the acquisition, construction, improvement, renovation, remodeling, furnishing and equipping of certain higher educational facilities of the Corporation, including but not limited to the construction of new student residence halls, faculty housing and a new health and sciences center, all located on the campus of the Corporation in Kirkland, Washington (the "Facilities"); (b) funding capitalized interest on the Bonds, if any; (c) funding any required debt service reserve fund; and (d) paying certain costs of issuance of the Bonds, including initial costs of any credit enhancement. The location of the Facilities is the main campus of the Corporation at 5520 108<sup>th</sup> Ave NE, Kirkland, WA 98033. The proceeds of the Bonds will be loaned to ACSI Capital Corporation which will in turn loan the proceeds to the Corporation. The Corporation will be the owner, operator and manager of the Facilities.

Federal law requires this public hearing and County action in order to allow interest on such bonds to be treated as tax-exempt. Interested persons are invited to attend the public hearing which will be the only public hearing held prior to the consideration by the Council of the ordinance authorizing the issuance of the Bonds for the proposed purposes set out above.

The Bonds shall not be an obligation of the state of Washington or King County and no public funds or credit shall be pledged or used to pay the principal or interest on the Bonds. Approval of the Bonds does not constitute county approval or disapproval of any other permits, certifications or actions or waive any of the permitting, environmental review, financial obligations or legal requirements applicable to the project.

A copy of Proposed Ordinance 2007-0441 is available for review at the Office of the Clerk of the Council, Room W1039, King County Courthouse, 516 Third Avenue, Seattle, WA 98104, telephone (206) 296-1020, and a copy of the proposed ordinance is available upon

request to the Clerk of the Council. It is also available on the Internet at [http://www.metrokc.gov/mkcc/clerk/Ordinances\\_advertised.htm](http://www.metrokc.gov/mkcc/clerk/Ordinances_advertised.htm)

Dated August 16, 2007 at Seattle, Washington.

METROPOLITAN KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

Anne Noris  
Clerk of the Council

## Northwest University TEFRA Agreement

THIS AGREEMENT ("Agreement") is dated this \_\_\_\_\_ day of August, 2007, between Northwest University ("School") and the Metropolitan King County Council ("King County"). The School has requested that King County hold a public hearing and consider approval, pursuant to the provisions of the federal Tax Equity and Fiscal Responsibility Act ("TEFRA"), of the proposed issuance by the Colorado Educational and Cultural Facilities Authority of its Adjustable Rate Demand Revenue Bonds, Series 2007 (Northwest University Project), in the aggregate principal amount of approximately \$35,000,000 (the "Bonds"). A form of the proposed notice of TEFRA Hearing is attached as Attachment A.

In order to avoid any argument that the unreimbursed utilization of King County resources in responding to the School's TEFRA request would violate the Washington State Constitution and in consideration for King County's administrative acts in response to the School's TEFRA request, including but not limited to clerical and other staff work, costs of advertising, and overhead costs associated with the public hearing and action on the request:

1. The School acknowledges that King County will undergo certain direct and indirect costs in responding to the School's request. The School and King County agree that a reasonable calculation of these costs is \$3000.00 (Three Thousand Dollars), plus the actual cost of advertising as billed by the publishing newspaper. The School hereby agrees to pay this amount.
2. The School agrees that it shall indemnify and hold harmless King County and its officials, agents and employees ("Indemnified Parties") from and against any and all claims, suits, actions, expenses, losses, costs, penalties, damages or liabilities of any kind arising out of, in connection with or incident to any and all King County's actions in response to the School's TEFRA request ("Claims"); provided, however, the School shall not be obligated to provide such indemnification to an Indemnified Party for any Claim resulting from such Indemnified Party's gross negligence or criminal misconduct. In addition, the School shall assume the reasonable defense expenses of King County and its officials and employees incurred in relation to any such Claims, including the payment of all defense expenses, including reasonable attorney's fees, expert fees and costs incurred by King County and its officials and employees on account of such litigation or claims. This indemnification obligation shall include, but is not limited to, all Claims against King County by an employee or former employee of the School or its Subcontractors, and the School, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects King County and its officials and employees only, under any industrial insurance act, including Title 51 RCW, other Worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In the event that King County incurs any judgment, award and/or cost including attorney's fees arising from the provisions of this Agreement, or to enforce the provisions of this Agreement, any such judgment, award, fees, expenses and costs shall be recoverable from the School. In the event of

litigation between the parties to enforce the rights under this subsection, reasonable attorney fees shall be allowed to the substantially prevailing party.

Dated the day and date first written above.

**Northwest University**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**Metropolitan King County Council**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

METROPOLITAN KING COUNTY COUNCIL  
NOTICE OF HEARING  
Proposed Ordinance 2007-XXXX

NOTICE IS HEREBY GIVEN that a public hearing will be held before the Metropolitan King County Council, Room 1001, King County Courthouse, Seattle, Washington, on the 4th day of September, 2007, at 1:30 p.m. to consider adoption of Proposed Ordinance 2007-XXXX.

SUMMARY

Proposed Ordinance 2007-XXXX is an ordinance approving the proposed issuance by the Colorado Educational and Cultural Facilities Authority (the "Authority") of its Adjustable Rate Demand Revenue Bonds, Series 2007 (Northwest University Project), in the aggregate principal amount of approximately \$35,000,000 (the "Bonds") for the purposes of: (a) financing the costs of, or refinancing certain indebtedness of Northwest University, a Washington nonprofit corporation (the "Corporation") and/or its affiliates, the proceeds of which indebtedness were used to finance the costs of, the acquisition, construction, improvement, renovation, remodeling, furnishing and equipping of certain higher educational facilities of the Corporation, including but not limited to the construction of new student residence halls, faculty housing and a new health and sciences center, all located on the campus of the Corporation in Kirkland, Washington (the "Facilities"); (b) funding capitalized interest on the Bonds, if any; (c) funding any required debt service reserve fund; (d) paying certain costs of issuance of the Bonds, including initial costs of any credit enhancement. The location of the Facilities is the main campus of the Corporation at 5520 108<sup>th</sup> Ave NE, Kirkland, WA 98033. The proceeds of the Bonds will be loaned to ACSI Capital Corporation which will in turn loan the proceeds to the Corporation. The Corporation will be the owner, operator and manager of the Facilities.

Federal law requires this public hearing and County action in order to allow interest on such bonds to be treated as tax-exempt. Interested persons are invited to attend the public hearing which will be the only public hearing held prior to the consideration by the Council of the ordinance authorizing the issuance of the Bonds for the proposed purposes set out above.

The Bonds shall not be an obligation of the state of Washington or King County and no public funds or credit shall be pledged or used to pay the principal or interest on the Bonds. Approval of the Bonds does not constitute county approval or disapproval of any other permits, certifications or actions or waive any of the permitting, environmental review, financial obligations or legal requirements applicable to the project.

A copy of Proposed Ordinance 2007-XXXX is available for review at the Office of the Clerk of the Council, Room W1025, King County Courthouse, 516 Third Avenue, Seattle, WA 98104, telephone (206) 296-1020, and a copy of the proposed ordinance is available upon request to the Clerk of the Council. It is also available on the Internet at [http://www.metrokc.gov/mkcc/clerk/Ordinances\\_advertised.htm](http://www.metrokc.gov/mkcc/clerk/Ordinances_advertised.htm)

Dated August 16, 2007 at Seattle, Washington.

METROPOLITAN KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

Anne Noris  
Clerk of the Council