

Enrolled
House Bill 3482

Sponsored by Representative BONAMICI; Representatives BRUUN, CANNON, CLEM, D EDWARDS, GILLIAM, HUNT, MACPHERSON, MAURER, READ, ROBLAN, TOMEI (at the request of Office of the State Treasurer)

CHAPTER

AN ACT

Relating to Oregon Facilities Authority; creating new provisions; amending ORS 289.005, 289.010, 289.100, 289.110 and 289.125; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 289.005 is amended to read:

289.005. As used in this chapter, unless the context requires otherwise:

- (1) "Authority" means the Oregon Facilities Authority created by this chapter.
- (2) "Bonds" or "revenue bonds" means revenue bonds, notes, bond anticipation notes and any other evidence of indebtedness of the authority issued under the provisions of this chapter, including revenue refunding bonds, notwithstanding that the same may be secured by any federally guaranteed security, whether acquired by the authority or by a participating institution, or by mortgage, the full faith and credit or by any other lawfully pledged security of one or more participating institutions.
- (3) "Cost" means the cost of:
 - (a) Construction, acquisition, alteration, enlargement, reconstruction and remodeling of a project, including all lands, structures, real or personal property, rights, rights of way, air rights, franchises, easements and interests acquired or used for or in connection with a project;
 - (b) Demolishing or removing any buildings or structures on land as acquired, including the cost of acquiring any lands to which such buildings or structures may be moved;
 - (c) All machinery and equipment;
 - (d) Financing charges, interest prior to, during and for a period after completion of construction and acquisition, reasonably required amounts to make the project operational, provisions for reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations and improvements;
 - (e) Architectural, actuarial engineering, financial and legal services, plans specifications, studies, surveys, estimates of costs and of revenues, administrative expenses, expenses necessary or incident to determining the feasibility or practicability of constructing the project; and
 - (f) Such other expenses as may be necessary or incident to a project, the financing of such project and the placing of the project in operation.
- (4) "Cultural institution" means a public or nonprofit institution within this state which engages in the cultural, intellectual, scientific, environmental, educational or artistic enrichment of the people of this state. "Cultural institution" includes, without limitation, aquaria, botanical societies, historical societies, land conservation organizations, libraries, museums, performing arts associations or societies, scientific societies, wildlife conservation organizations and zoological societies.

“Cultural institution” does not mean any school or any institution primarily engaged in religious or sectarian activities.

(5) “Health care institution” means a public or nonprofit organization **within this state** that provides health care and related services, including but not limited to the provision of inpatient and outpatient care, diagnostic or therapeutic services, laboratory services, medicinal drugs, nursing care, assisted living, elderly care and housing, including retirement communities, and equipment used or useful for the provision of health care and related services.

(6) “Housing institution” means a public or nonprofit organization **within this state** that provides decent, affordable housing to low income persons.

(7) “Institution” means *[an institution for housing, higher education or prekindergarten through grade 12 education, a school for the handicapped, a health care institution or a cultural institution within this state]* **a cultural institution, a health care institution, a housing institution, an institution for higher education, an institution for prekindergarten through grade 12 education, a school for persons with disabilities or another nonprofit.**

(8) “Institution for higher education” means a public or nonprofit educational institution within this state authorized by law to provide a program of education beyond the high school level, including community colleges and associate degree granting institutions. “Institution for higher education” does not mean any school or any institution primarily engaged in religious or sectarian activities.

(9) “Institution for prekindergarten through grade 12 education” means an Oregon prekindergarten as defined in ORS 329.170, a public educational institution within this state authorized by law to provide a program of education for kindergarten through grade 12 or a nonprofit educational institution within this state registered as a private school under ORS 345.545 that provides a program of education for prekindergarten through grade 12. “Institution for prekindergarten through grade 12 education” does not mean a school or institution primarily engaged in religious or sectarian activities.

(10) “Nonprofit” means an institution, organization or entity **within this state** exempt from taxation under section 501(c)(3) of the Internal Revenue Code as *[amended and in effect on the effective date of this chapter.]* **defined in ORS 314.011.**

[(11) “Participating institution” means a participating institution for health care, housing, higher education, a participating school for the handicapped or a participating cultural institution.]

[(12)(a)] **(11)(a)** “Project” means the financing or refinancing, including without limitation, acquisition, construction, enlargement, remodeling, renovation, improvement, furnishing or equipping, of the following:

(A) In the case of a participating institution that is an institution for higher education, an institution for prekindergarten through grade 12 education or a school for *[the handicapped]* **persons with disabilities**, a structure or structures suitable for use as a dormitory or other multiunit housing facility for students, faculty, officers or employees, or a dining hall, student union, administration building, academic building, library, laboratory, research facility, classroom, athletic facility, health care facility, maintenance, storage or utility facility and other structures or facilities related to any of the structures required or used for the instruction of students, the conducting of research or the operation of an institution for higher education, an institution for prekindergarten through grade 12 education or a school for *[the handicapped]* **persons with disabilities**. It shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended and shall further include any furnishings, equipment, machinery and other similar items necessary or convenient for the operation of an institution of higher education, an institution for prekindergarten through grade 12 education or a school for *[the handicapped]* **persons with disabilities**, whether or not such items are related to a particular facility or structure financed under this chapter[;].

(B) In the case of a participating institution that is a housing institution, a structure or structures suitable for use as housing, including residences or multiunit housing facilities, administration

buildings, maintenance, storage or utility facilities and other structures or facilities related to any of the structures required or used for the operation of the housing, including parking and other facilities or structures essential or convenient for the orderly provision of such housing. It shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the particular housing facility or structure in the manner for which its use is intended and shall further include any furnishings, equipment, machinery and other similar items necessary or convenient for the provision of housing, whether or not such items are related to a particular facility or structure financed under this chapter[;].

(C) In the case of a participating institution that is a cultural institution, a structure or structures suitable for its purposes, whether or not to be used to provide educational services, or research resources, including use as or in connection with an administrative facility, aquarium, assembly hall, auditorium, botanical garden, exhibition hall, gallery, greenhouse, library, museum, scientific laboratory, theater or zoological facility. It shall also include supporting facilities, landscaping, site preparation, furniture, equipment, machinery and other similar items necessary or convenient for the operation of a cultural institution, whether or not such items are related to a particular facility or structure financed under this chapter, including books, works of art or other items for display or exhibition[; *and*].

(D) In the case of a participating institution that is a health care institution, a structure or structures suitable for its purposes, including hospital facilities, inpatient and outpatient clinics, doctors' offices, administration buildings, parking, maintenance, storage or utility facilities, nursing care or assisted living facilities, elderly care and housing facilities, including retirement communities, and other structures or facilities related to any of the structures required or used for the operation of the health care institution, including other facilities or structures essential or convenient for the orderly provision of such health care. It shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the particular health care facility or structure in the manner for which its use is intended and shall further include any working capital, furnishings, equipment, machinery and other similar items necessary or convenient for the provision of health care, whether or not such items are related to a particular facility or structure financed under this chapter, including borrowings needed to alleviate interim cash flow deficits of a health care institution.

(E) In the case of a participating institution that is a nonprofit not otherwise specified in this subsection, a structure or structures suitable for its purposes, including facilities or structures essential or convenient for the orderly operations of the nonprofit. It shall also include acquisition of interests in land, landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the nonprofit, whether or not the items are related to a particular facility or structure financed under this chapter, including borrowings needed to alleviate interim cash flow deficits of the nonprofit.

(b) "Project" also includes any combination of one or more of the projects undertaken jointly by one or more participating institutions with each other or with other parties.

(c) "Project" does not include any facility used or to be used for sectarian instruction or as a place of religious worship or any facility which is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination.

[(13)] **(12)** "School for [*the handicapped*] **persons with disabilities**" means a public or nonprofit primary, secondary or post-secondary school within this state [*which*] **that** serves students at least 70 percent of whom are [*handicapped*] **persons with disabilities** as determined by one or more appropriate education, rehabilitation, medical or mental health authorities; is accredited by a recognized accrediting body; and is determined by the authority to be a major resource of benefit to [*the handicapped*] **persons with disabilities**. "School for [*the handicapped*] **persons with disabilities**" does not mean any school or any institution primarily engaged in religious or sectarian activities.

SECTION 2. ORS 289.010 is amended to read:

289.010. (1) The Legislative Assembly finds that by use of the powers and procedures described in this chapter for the assembling and financing of lands for housing, educational, [*and*] cultural **or**

other nonprofit uses and for the construction and financing of facilities for [*such*] **those** uses, financed through the issuance of revenue bonds secured solely by the properties and rentals thus made available, the state may be able to [*effect substantially the provisions*] **increase the availability** of decent, affordable housing, the achievement of higher levels of learning and development of the intellectual capacities of citizens, **the** [*and*] expansion of the authorized services and resources for the intellectual and artistic enrichment of citizens, **the advancement of nonprofit activities and services and the general well-being of citizens.**

(2) It is the purpose of this chapter to authorize the exercise of powers granted by this chapter by this state in addition to and not in lieu of any other powers it may possess.

SECTION 3. ORS 289.100 is amended to read:

289.100. (1) There is created a body politic and corporate to be known as the Oregon Facilities Authority. The authority is constituted a public instrumentality, and the exercise by the authority of the powers conferred by this chapter [*shall be considered and held to be*] **is** the performance of an essential public function.

(2) The authority [*shall consist of five*] **consists of seven** members who [*shall be*] **must be** residents of this state[, *not more than three of whom shall be members of the same political party*], **not more than four of whom are members of the same political party.** The State Treasurer shall appoint the members, **and members serve at the pleasure of the State Treasurer.** At least one of the members [*shall be a person*] **must be an individual** knowledgeable in the field of state and municipal finance. At least one of the members [*shall be a person*] **must be an individual** knowledgeable in the building construction field.

(3) Upon the expiration of the term of [*any*] **a member, the State Treasurer shall appoint** a successor [*shall be appointed*] for a term of four years.

(4) The State Treasurer shall [*fill any*] **appoint an individual to fill a** vacancy for the remainder of the unexpired term.

SECTION 4. ORS 289.110 is amended to read:

289.110. (1) In addition to any other powers granted by law, [*in relation to an eligible project,*] the state, acting through the State Treasurer or a designee [*thereof*] **of the State Treasurer,** may:

[(1)] **(a)** Enter into agreements to finance the costs of an eligible project by lending the proceeds of bonds authorized by this chapter to [*any*] **a** participating institution under [*such*] terms and with [*such*] security [*as the state may approve*] **approved by the state.**

[(2)] **(b)** Lease and sublease eligible projects to [*any*] **a** participating institution [*in such manner that rents to be charged for the use of such projects shall be established, and revised from time to time as necessary, so as to produce income and revenue sufficient to provide for the prompt payment of principal of and interest on all bonds issued under this section when due, and the lease shall also provide that the lessee shall be required to pay all expenses of the operation and maintenance of the project including, but without limitation, adequate insurance thereon and insurance against all liability for injury to persons or property arising from the operation thereof, and all taxes and special assessments levied upon or with respect to the leased premises and payable during the term of the lease, during which term ad valorem taxes in the same amount and to the same extent as though the lessee were the owner of all real and personal property comprising the project*] **subject to subsection (2) of this section.**

[(3)] *Pledge and assign to the holders of such bonds or a trustee therefor all or any part of the revenues of one or more eligible projects owned or to be acquired by the state, and define and segregate such revenues or provide for the payment thereof to a trustee.*

(c) Pledge or assign all or part of the revenues of one or more eligible projects owned or to be acquired by the state to the holders of bonds issued under this chapter or to a trustee for the holders, and segregate the revenues or provide for payment of the revenues to the trustee.

[(4)] **(d)** Mortgage or otherwise encumber eligible projects in favor of the holders of [*such bonds or a trustee therefor. However, in creating any such mortgages or encumbrances, the state cannot ob-*

ligate itself] **bonds issued under this chapter or a trustee for the holders without obligating the state** except with respect to the project.

[(5) Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers granted by this section, or in the performance of its covenants or duties, or in order to secure the payment of its bonds, including a contract entered into prior to the construction, acquisition and installation of the eligible project authorizing the lessee, subject to such terms and conditions as the state shall find necessary or desirable and proper, to provide for the construction, acquisition and installation of the buildings, improvements and equipment to be included in the project by any means available to the lessee and in the manner determined by the lessee.]

(e) Make contracts, execute instruments and do what is necessary or desirable to exercise the powers granted by this chapter, to perform the covenants or duties of this state or to secure the payment of bonds issued under this chapter. Contracts that may be made by the state include contracts entered into prior to construction, acquisition or installation of an eligible project that authorize, subject to terms and conditions the state finds necessary or desirable, a lessee to provide for construction, acquisition or installation of buildings, improvements or equipment to be included in the project.

[(6) Enter into and perform such contracts and agreements with participating institutions as the respective boards of directors may consider proper and feasible for or concerning the planning, construction, installation, lease, or other acquisition, and the financing of such facilities, which contracts and agreements may establish a body as may be considered proper for the supervision and general management of the facilities of the eligible project.]

(f) Enter into and perform contracts and agreements with participating institutions for the planning, construction, installation, acquisition, leasing or financing of facilities of an eligible project, including a contract or agreement that establishes a body for the supervision and general management of the facilities.

[(7) Accept from any authorized agency of the federal government loans or grants for the planning, construction, acquisition, leasing, or other provision of any eligible project, and enter into agreements with such agency respecting such loans or grants.]

(g) Accept loans or grants for the planning, construction, installation, acquisition, leasing or other provision of an eligible project from an authorized agency of the federal government, and enter into agreements with the agency respecting the loans or grants.

(2) A lease or sublease entered into under subsection (1)(b) of this section must provide that:

(a) Rents charged for the use of the project are established and revised as necessary to produce sufficient revenue to allow for payment of the principal of and interest on bonds issued under this chapter when due; and

(b) The lessee or sublessee is required to pay:

(A) The expenses of the operation and maintenance of the project including, but not limited to, adequate insurance on the project and insurance against liability for injury to persons or property arising from the operation of the project; and

(B) The taxes and special assessments levied upon the leased or subleased premises and payable during the term of the lease or sublease.

(3) During the term of a lease or sublease entered into under subsection (1)(b) of this section, ad valorem taxes must be imposed on the real and personal property of the eligible project in the same manner as the taxes would be imposed if the lessee or sublessee were the owner of the eligible project.

SECTION 5. ORS 289.125 is amended to read:

289.125. (1) The Oregon Facilities Authority shall adopt by rule standards by which to determine the eligibility of projects for bond financing pursuant to this chapter. In determining [*such*] **the** standards, the authority shall consider all relevant data. The standards of the authority [*shall*] **must** provide that projects are approved in accordance with criteria reflecting the benefits to the state. [*Such*] Criteria [*shall*] include, but need not be limited to[, *the following*]:

(a) Supporting projects that increase the number of decent, affordable housing units in this state[.];

(b) Expanding the educational resources in this state[.]; **or**

(c) Expanding the cultural resources in this state.

(2) Upon determining a project as eligible, the authority shall forward the application to the State Treasurer, who shall determine whether to issue the revenue bonds.

(3) The authority may treat as a single eligible project for bonding purposes any number of projects determined to be eligible projects.

(4) The authority shall collect the fees set forth in subsection (5) of this section from an applicant that seeks to have a project declared eligible for financing. The fee **identified in subsection (5)(a) of this section** may be collected even though the project has not been determined to be eligible for financing. [*Moneys collected under this subsection are continuously appropriated to the authority for the purpose of administration or funding of any program it is authorized to operate.*]

(5) The fees described in subsection (4) of this section are [*as follows*]:

[(a) \$250 for an application of not to exceed \$500,000.]

[(b) \$500 for an application of more than \$500,000.]

(a) An application fee determined by the Oregon Facilities Authority by rule.

[(c)] **(b)** A closing fee [*of*] not to exceed one-half of one percent of the total bond issue for the project, as determined by the authority.

(6) The **authority shall deposit** fees received under subsection (5) of this section [*shall be credited to and deposited*] in the Oregon Facilities Authority Account established under ORS 289.130.

SECTION 6. Notwithstanding the term of office of members of the Oregon Facilities Authority specified in ORS 289.100, for the purpose of maintaining or improving the staggering of terms of individual members, the State Treasurer may establish shorter terms for the first members appointed to increase the membership of the authority from five members to seven members pursuant to the amendments to ORS 289.100 by section 3 of this 2007 Act.

SECTION 7. This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on its passage.

Passed by House April 24, 2007

Received by Governor:

Repassed by House June 18, 2007

.....M.,....., 2007

Approved:

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Chief Clerk of House

.....M.,....., 2007

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Speaker of House

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Governor

Passed by Senate June 14, 2007

Filed in Office of Secretary of State:

.....M.,....., 2007

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President of Senate

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Secretary of State