

Senate Bill 614

Sponsored by COMMITTEE ON EDUCATION AND GENERAL GOVERNMENT

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires health care institutions and providers of hospital facilities, except rural hospitals, to obtain certificate of need in order to qualify to receive proceeds of public borrowing for capital construction.

Caps amount of bond proceeds Oregon Facilities Authority and hospital authority may provide to nonprofit health care institution or nonprofit provider of hospital facilities if institution or provider has specified amount of cash on hand.

Requires members of Oregon Facilities Authority to declare actual or potential conflict of interest based on relationship with nonprofit corporation.

Requires members of board of directors of hospital authority to file statement of economic interest and declare actual or potential conflict of interest based on relationship with nonprofit corporation.

A BILL FOR AN ACT

1
2 Relating to public borrowing for health care facilities; creating new provisions; and amending ORS
3 244.050, 289.100, 408.370, 441.540 and 442.315.

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

5 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS chapter 289.**

6 **SECTION 2. (1) As used in this section:**

7 (a) "Cash on hand" means cash and cash equivalents, short term investments and cur-
8 rent and noncurrent assets:

9 (A) Including assets that are limited as to use; and

10 (B) Excluding assets that:

11 (i) Are property, plant and equipment, any of which are used for health care operations;

12 (ii) Are pension plan assets; or

13 (iii) Constitute a reasonable amount of self-insurance assets.

14 (b) "Public financing" means the cumulative amount of revenue bonds, except refunding
15 bonds, issued under this chapter or issued by an authority as defined in ORS 441.525.

16 (2) The Oregon Facilities Authority may not provide public financing to a nonprofit
17 health care institution, or to a combination of nonprofit health care institutions working
18 cooperatively, in an amount that exceeds \$10 million in a two-year period if, after excluding
19 sufficient operating cash for 100 days of operations, the institution or institutions, including
20 all affiliated entities, have cash on hand that is more than twice the amount of the net pro-
21 ceeds of revenue bonds that the Oregon Facilities Authority and an authority as defined in
22 ORS 441.525 propose to issue in favor of the institution or institutions.

23 (3) A nonprofit health care institution may not avoid the financing limit in subsection (2)
24 of this section by parsing the component or related portions of a project into separate
25 projects.

26 (4) Except as provided in this section, a health care institution must obtain a certificate

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 of need to qualify to receive public financing for a project under this chapter.

2 (5) Subsection (4) of this section:

3 (a) Applies to a health care institution, including a health care institution that:

4 (A) Provides basic health services; or

5 (B) Is not otherwise required to obtain a certificate of need under ORS 442.315.

6 (b) Does not apply to a rural hospital that is not required to obtain a certificate of need
7 under ORS 442.315 (8).

8 **SECTION 3.** Section 4 of this 2007 Act is added to and made a part of ORS 441.525 to
9 441.595.

10 **SECTION 4.** (1) As used in this section:

11 (a) "Cash on hand" means cash and cash equivalents, short term investments and cur-
12 rent and noncurrent assets:

13 (A) Including assets that are limited as to use; and

14 (B) Excluding assets that:

15 (i) Are property, plant and equipment, any of which are used for health care operations;

16 (ii) Are pension plan assets; or

17 (iii) Constitute a reasonable amount of self-insurance assets.

18 (b) "Provider" means a political subdivision of the state or a private nonprofit corpo-
19 ration that provides hospital facilities.

20 (c) "Public financing" means the cumulative amount of revenue bonds, except refunding
21 bonds, issued under ORS chapter 289 or issued by an authority.

22 (2) An authority may not provide public financing to a nonprofit corporation, or to a
23 combination of nonprofit corporations working cooperatively, in an amount that exceeds \$10
24 million in a two-year period if, after excluding sufficient operating cash for 100 days of op-
25 erations, the corporation or corporations, including all affiliated entities, have cash on hand
26 that is more than twice the amount of the net proceeds of revenue bonds that the Oregon
27 Facilities Authority and an authority propose to issue in favor of the corporation or corpo-
28 rations.

29 (3) A nonprofit corporation may not avoid the financing limit in subsection (2) of this
30 section by parsing the component or related portions of a hospital facility into separate
31 projects.

32 (4) Except as provided in this section, a provider must obtain a certificate of need to
33 qualify to receive public financing for a hospital facility under ORS 441.525 to 441.595.

34 (5) Subsection (4) of this section:

35 (a) Applies to a provider, including a provider that:

36 (A) Provides basic health services; or

37 (B) Is not otherwise required to obtain a certificate of need under ORS 442.315.

38 (b) Does not apply to a rural hospital that is not required to obtain a certificate of need
39 under ORS 442.315 (8).

40 **SECTION 5.** ORS 442.315 is amended to read:

41 442.315. (1) Any new hospital or new skilled nursing or intermediate care service or facility not
42 excluded pursuant to ORS 441.065 shall obtain a certificate of need from the Department of Human
43 Services prior to an offering or development.

44 (2) The department shall adopt rules specifying criteria and procedures for making decisions as
45 to the need for the new services or facilities.

1 (3)(a) An applicant for a certificate of need shall apply to the department on forms provided for
2 this purpose by department rule.

3 (b) An applicant shall pay a fee prescribed as provided in this section. Subject to the approval
4 of the Oregon Department of Administrative Services, the Department of Human Services shall
5 prescribe application fees, based on the complexity and scope of the proposed project.

6 (4) The Department of Human Services shall be the decision-making authority for the purpose
7 of certificates of need.

8 (5)(a) An applicant or any affected person who is dissatisfied with the proposed decision of the
9 department is entitled to an informal hearing in the course of review and before a final decision is
10 rendered.

11 (b) Following a final decision being rendered by the department, an applicant or any affected
12 person may request a reconsideration hearing pursuant to ORS chapter 183.

13 (c) In any proceeding brought by an affected person or an applicant challenging a department
14 decision under this subsection, the department shall follow procedures consistent with the provisions
15 of ORS chapter 183 relating to a contested case.

16 (6) Once a certificate of need has been issued, it may not be revoked or rescinded unless it was
17 acquired by fraud or deceit. However, if the department finds that a person is offering or developing
18 a project that is not within the scope of the certificate of need, the department may limit the project
19 as specified in the issued certificate of need or reconsider the application. A certificate of need is
20 not transferable.

21 (7) Nothing in this section applies to any hospital, skilled nursing or intermediate care service
22 or facility that seeks to replace equipment with equipment of similar basic technological function
23 or an upgrade that improves the quality or cost-effectiveness of the service provided. Any person
24 acquiring such replacement or upgrade shall file a letter of intent for the project in accordance with
25 the rules of the department if the price of the replacement equipment or upgrade exceeds \$1 million.

26 (8) Except as required in subsection (1) of this section for a new hospital or new skilled nursing
27 or intermediate care service or facility not operating as a Medicare swing bed program, nothing in
28 this section requires a rural hospital as defined in ORS 442.470 (5)(a)(A) and (B) to obtain a certifi-
29 cate of need.

30 (9) Nothing in this section applies to basic health services, but basic health services do not in-
31 clude:

- 32 (a) Magnetic resonance imaging scanners;
- 33 (b) Positron emission tomography scanners;
- 34 (c) Cardiac catheterization equipment;
- 35 (d) Megavoltage radiation therapy equipment;
- 36 (e) Extracorporeal shock wave lithotrippers;
- 37 (f) Neonatal intensive care;
- 38 (g) Burn care;
- 39 (h) Trauma care;
- 40 (i) Inpatient psychiatric services;
- 41 (j) Inpatient chemical dependency services;
- 42 (k) Inpatient rehabilitation services;
- 43 (L) Open heart surgery; or
- 44 (m) Organ transplant services.

45 (10) In addition to any other remedy provided by law, whenever it appears that any person is

1 engaged in, or is about to engage in, any acts that constitute a violation of this section, or any rule
2 or order issued by the department under this section, the department may institute proceedings in
3 the circuit courts to enforce obedience to such statute, rule or order by injunction or by other
4 processes, mandatory or otherwise.

5 **(11) A health care institution, as defined in ORS 289.005, that is not otherwise required**
6 **to obtain a certificate of need must obtain a certificate of need to qualify to receive public**
7 **financing for a project under ORS chapter 289 as provided in section 2 of this 2007 Act.**

8 **(12) A provider, as defined in section 4 of this 2007 Act, that is not otherwise required**
9 **to obtain a certificate of need must obtain a certificate of need to qualify to receive public**
10 **financing for a health care facility under ORS 441.525 to 441.595 as provided in section 4 of**
11 **this 2007 Act.**

12 [(11)] (13) As used in this section, "basic health services" means health services offered in or
13 through a hospital licensed under ORS chapter 441, except skilled nursing or intermediate care
14 nursing facilities or services and those services specified in subsection (9) of this section.

15 **SECTION 6.** ORS 289.100 is amended to read:

16 289.100. (1) There is created a body politic and corporate to be known as the Oregon Facilities
17 Authority. The authority is constituted a public instrumentality, and the exercise by the authority
18 of the powers conferred by this chapter shall be considered and held to be the performance of an
19 essential public function.

20 (2) The authority shall consist of five members who shall be residents of this state, not more
21 than three of whom shall be members of the same political party. The State Treasurer shall appoint
22 the members. At least one of the members shall be a person knowledgeable in the field of state and
23 municipal finance. At least one of the members shall be a person knowledgeable in the building
24 construction field.

25 (3) Upon the expiration of the term of any member, a successor shall be appointed for a term
26 of four years. The State Treasurer shall fill any vacancy for the remainder of the unexpired term.

27 **(4) Notwithstanding the exception for pecuniary benefit or detriment described in ORS**
28 **244.020 (14)(c), a member is a public official subject to the requirements of ORS chapter 244**
29 **based on an actual conflict of interest or a potential conflict of interest arising out of the**
30 **member's relationship with a nonprofit corporation that is tax-exempt under section 501(c)**
31 **of the Internal Revenue Code, including employment with the nonprofit corporation or a re-**
32 **lationship with a foundation that provides assistance to the nonprofit corporation.**

33 **SECTION 7.** ORS 441.540 is amended to read:

34 441.540. (1) An authority shall be managed and controlled by a board of directors, who shall be
35 appointed by the governing body. The directors may be removed for cause or at the will of the
36 governing body. The directors shall serve without compensation. However, the authority may re-
37 imburse the directors for their expenses incurred in the performance of their duties.

38 (2) The board of directors shall adopt and may amend rules for calling and conducting its
39 meetings and carrying out its business and may adopt an official seal. All decisions of the board
40 shall be by motion or resolution and shall be recorded in the board's minute book which shall be a
41 public record. A majority of the board shall constitute a quorum for the transaction of business and
42 a majority thereof shall be sufficient for the passage of any such motion or resolution.

43 (3) The board may employ such employees and agents as it deems appropriate and provide for
44 their compensation.

45 **(4) Notwithstanding the exception for pecuniary benefit or detriment described in ORS**

1 **244.020 (14)(c), a director is a public official subject to the requirements of ORS chapter 244**
 2 **based on an actual conflict of interest or a potential conflict of interest arising out of the**
 3 **director's relationship with a nonprofit corporation that is tax-exempt under section 501(c)**
 4 **of the Internal Revenue Code, including employment with the nonprofit corporation or a re-**
 5 **lationship with a foundation that provides assistance to the nonprofit corporation.**

6 **SECTION 8.** ORS 244.050 is amended to read:

7 244.050. (1) On or before April 15 of each year the following persons shall file with the Oregon
 8 Government Standards and Practices Commission a verified statement of economic interest as re-
 9 quired under this chapter:

10 (a) The Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the
 11 Bureau of Labor and Industries, Superintendent of Public Instruction, district attorneys and mem-
 12 bers of the Legislative Assembly.

13 (b) Any judicial officer, including justices of the peace and municipal judges, except municipal
 14 judges in those cities where a majority of the votes cast in the subject city in the 1974 general
 15 election was in opposition to the ballot measure provided for in section 10, chapter 68, Oregon Laws
 16 1974 (special session), and except any pro tem judicial officer who does not otherwise serve as a
 17 judicial officer.

18 (c) Any candidate for an office designated in paragraph (a) or (b) of this subsection.

19 (d) The Deputy Attorney General.

20 (e) The Legislative Administrator, the Legislative Counsel, the Legislative Fiscal Officer, the
 21 Secretary of the Senate and the Chief Clerk of the House of Representatives.

22 (f) The Chancellor and Vice Chancellors of the Oregon University System and the president and
 23 vice presidents, or their administrative equivalents, in each institution under the jurisdiction of the
 24 State Board of Higher Education.

25 (g) The following state officers:

26 (A) Adjutant General.

27 (B) Director of Agriculture.

28 (C) Manager of State Accident Insurance Fund Corporation.

29 (D) Water Resources Director.

30 (E) Director of Department of Environmental Quality.

31 (F) Director of Oregon Department of Administrative Services.

32 (G) State Fish and Wildlife Director.

33 (H) State Forester.

34 (I) State Geologist.

35 (J) Director of Human Services.

36 (K) Director of the Department of Consumer and Business Services.

37 (L) Director of the Department of State Lands.

38 (M) State Librarian.

39 (N) Administrator of Oregon Liquor Control Commission.

40 (O) Superintendent of State Police.

41 (P) Director of the Public Employees Retirement System.

42 (Q) Director of Department of Revenue.

43 (R) Director of Transportation.

44 (S) Public Utility Commissioner.

45 (T) Director of Veterans' Affairs.

- 1 (U) Executive Director of Oregon Government Standards and Practices Commission.
- 2 (V) Director of the State Department of Energy.
- 3 (W) Director and each assistant director of the Oregon State Lottery.
- 4 (h) Any assistant in the Governor's office other than personal secretaries and clerical personnel.
- 5 (i) Every elected city or county official except elected officials in those cities or counties where
- 6 a majority of votes cast in the subject city or county in any election on the issue of filing statements
- 7 of economic interest under this chapter was in opposition.
- 8 (j) Every member of a city or county planning, zoning or development commission except such
- 9 members in those cities or counties where a majority of votes cast in the subject city or county at
- 10 any election on the issue of filing statements of economic interest under this chapter was in oppo-
- 11 sition to the ballot measure provided for in section 10, chapter 68, Oregon Laws 1974 (special ses-
- 12 sion).
- 13 (k) The chief executive officer of a city or county who performs the duties of manager or prin-
- 14 cipal administrator of the city or county except such employees in those cities or counties where a
- 15 majority of votes cast in the subject city or county in an election on the issue of filing statements
- 16 of economic interest under this chapter was in opposition.
- 17 (L) Members of local government boundary commissions formed under ORS 199.410 to 199.519.
- 18 (m) Every member of a governing body of a metropolitan service district and the executive of-
- 19 ficer thereof.
- 20 (n) Each member of the board of directors of the State Accident Insurance Fund Corporation.
- 21 (o) The chief administrative officer and the financial officer of each common and union high
- 22 school district, education service district and community college district.
- 23 (p) Every member of the following state boards and commissions:
- 24 (A) Board of Geologic and Mineral Industries.
- 25 (B) Oregon Economic and Community Development Commission.
- 26 (C) State Board of Education.
- 27 (D) Environmental Quality Commission.
- 28 (E) Fish and Wildlife Commission of the State of Oregon.
- 29 (F) State Board of Forestry.
- 30 (G) Oregon Government Standards and Practices Commission.
- 31 (H) Oregon Health Policy Commission.
- 32 (I) State Board of Higher Education.
- 33 (J) Oregon Investment Council.
- 34 (K) Land Conservation and Development Commission.
- 35 (L) Oregon Liquor Control Commission.
- 36 (M) Oregon Short Term Fund Board.
- 37 (N) State Marine Board.
- 38 (O) Mass transit district boards.
- 39 (P) Energy Facility Siting Council.
- 40 (Q) Board of Commissioners of the Port of Portland.
- 41 (R) Employment Relations Board.
- 42 (S) Public Employees Retirement Board.
- 43 (T) Oregon Racing Commission.
- 44 (U) Oregon Transportation Commission.
- 45 (V) Wage and Hour Commission.

- 1 (W) Water Resources Commission.
2 (X) Workers' Compensation Board.
3 (Y) Oregon Facilities Authority.
4 (Z) Oregon State Lottery Commission.
5 (AA) Pacific Northwest Electric Power and Conservation Planning Council.
6 (BB) Columbia River Gorge Commission.
7 (CC) Oregon Health and Science University Board of Directors.
8 (q) The following officers of the State Treasury:
9 (A) Chief Deputy State Treasurer.
10 (B) Executive Assistant to the State Treasurer.
11 (C) Director of the Investment Division.
12 (r) Every member of the board of commissioners of a port governed by ORS 777.005 to 777.725
13 and 777.915 to 777.953.
14 (s) **Every member of the board of directors of an authority created under ORS 441.525**
15 **to 441.595.**
16 (2) By April 15 next after the date an appointment takes effect, every appointed public official
17 on a board or commission listed in subsection (1) of this section shall file with the commission a
18 statement of economic interest as required under ORS 244.060, 244.070 and 244.090.
19 (3) By April 15 next after the filing deadline for the primary election, each candidate for elective
20 public office described in subsection (1) of this section shall file with the commission a statement
21 of economic interest as required under ORS 244.060, 244.070 and 244.090.
22 (4) Within 30 days after the filing deadline for the general election, each candidate for elective
23 public office described in subsection (1) of this section who was not a candidate in the preceding
24 primary election, or who was nominated for elective public office described in subsection (1) of this
25 section at the preceding primary election by write-in votes, shall file with the commission a state-
26 ment of economic interest as required under ORS 244.060, 244.070 and 244.090.
27 (5) The Legislative Assembly shall maintain a continuing review of the operation of this chapter.
28 (6) Subsections (1) to (5) of this section apply only to persons who are incumbent, elected or
29 appointed officials as of April 15 and to persons who are candidates for office on April 15. Those
30 sections also apply to persons who do not become candidates until 30 days after the filing deadline
31 for the statewide general election.
32 (7)(a) Failure to file the statement required by this section subjects a person to a civil penalty
33 that may be imposed as specified in ORS 183.745, but the enforcement of this subsection does not
34 require the Oregon Government Standards and Practices Commission to follow the procedures in
35 ORS 244.260 before finding that a violation of this section has occurred.
36 (b) Failure to file the required statement in timely fashion shall be prima facie evidence of a
37 violation of this section.
38 (c) If within five days after the date on which the statement is to be filed under this section the
39 statement has not been received by the commission, the commission shall notify the public official
40 and give the public official not less than 15 days to comply with the requirements of this section.
41 If the public official fails to comply by the date set by the commission, the commission may impose
42 a civil penalty of \$5 for each day the statement is late beyond the date fixed by the commission.
43 The maximum penalty that may be accrued under this section is \$1,000.
44 (d) A civil penalty imposed under this subsection is in addition to and not in lieu of sanctions
45 that may be imposed under ORS 244.380.

1 **SECTION 9.** ORS 408.370 is amended to read:

2 408.370. (1) In addition to the other uses for the Oregon Housing Fund set forth in ORS 458.600
3 to 458.655, financial support for an Oregon Veterans' Home is a permitted use of moneys from the
4 Oregon Housing Fund.

5 (2) Notwithstanding ORS 442.315 **(1) to (10)**, 442.325 and 442.584, an Oregon Veterans' Home is
6 not subject to any certificate of need requirement but is otherwise subject to the authority of the
7 Health Resources Commission.

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