

Enrolled
House Bill 2105

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CHAPTER

AN ACT

Relating to purchase of bonds; creating new provisions; amending ORS 286A.001, 286A.100, 287A.001 and 456.680; and declaring an emergency.

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

SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 286A.

SECTION 2. (1) A related agency, with the approval of the State Treasurer, or the State Treasurer, on behalf of a related agency:

(a) May bid for, purchase, hold, cause to be held in trust and remarket bonds issued by the State Treasurer on behalf of the related agency.

(b) May not, except as provided in section 6 (2) of this 2009 Act, bid for, purchase, hold, cause to be held in trust and remarket bonds issued by the State Treasurer on behalf of another state agency.

(2) Except as otherwise provided in the operative documents, the purchase or acquisition of bonds under subsection (1) of this section does not cancel or extinguish the bonds unless the related agency elects in writing to cancel or extinguish the bonds.

(3) In addition to other uses authorized by law, a related agency, or the State Treasurer on behalf of a related agency, may purchase bonds under subsection (1) of this section using moneys that are:

(a) Deposited in a fund or account in the State Treasury for the use of the related agency or held by a trustee of the related agency; and

(b) Appropriated or otherwise legally available to the related agency for repayment of the bonds or for payment of the costs of the related agency to administer the program under which the bonds were sold, including bond proceeds and reserves established for the bonds.

(4) Within two business days after using the authority to purchase bonds under this section, the State Treasurer shall notify the legislative revenue committees, when the Legislative Assembly is in regular or special session, or the Legislative Revenue Officer and the Legislative Fiscal Officer, during the interim, of:

(a) The amount and status of the bonds purchased by or on behalf of a related agency under this section; and

(b) The current or anticipated interest rates applicable to the bonds.

(5) Not later than February 1 of each year, the State Treasurer shall submit a report to the legislative revenue committees, when the Legislative Assembly is in regular or special session, or to the Legislative Revenue Officer and the Legislative Fiscal Officer, during the interim, describing:

(a) The amount and status of bonds purchased during the previous year by or on behalf of related agencies under this section; and

(b) The savings realized or costs incurred by related agencies from the purchase of bonds under this section.

SECTION 3. Section 4 of this 2009 Act is added to and made a part of ORS chapter 287A.

SECTION 4. (1) Notwithstanding any limitation in a local charter, a public body may bid for, purchase, hold, cause to be held in trust and remarket bonds issued by the public body.

(2) Except as otherwise provided in the operative documents, the purchase or acquisition of bonds under this section does not cancel or extinguish the bonds unless the public body elects in writing to cancel or extinguish the bonds.

SECTION 5. Section 6 of this 2009 Act is added to and made a part of ORS 293.701 to 293.820.

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

(a) “Related agency” has the meaning given that term in ORS 286A.001.

(b) “State government” has the meaning given that term in ORS 174.111.

(2) If the State Treasurer, acting as investment officer, or a trustee, investing moneys for a related agency, purchases or acquires bonds issued by state government, the purchase or acquisition does not cancel or extinguish the bonds.

SECTION 7. ORS 286A.001 is amended to read:

286A.001. As used in this chapter:

(1) “Agreement for exchange of interest rates” means a contract, or an option or forward commitment to enter into a contract, for the exchange of interest rates that provides for:

(a) Payments based on levels of or changes in interest rates; or

(b) Provisions to hedge payment, rate, spread or similar exposure including, but not limited to, an interest rate floor or cap or an option, put or call.

(2) “Bond”:

(a) Means a contractual undertaking or instrument of the State of Oregon to repay borrowed moneys.

(b) Does not mean a financing agreement, as defined in ORS 283.085, if the principal amount of the agreement is \$100,000 or less, or a credit enhancement device.

(3) “Counterparty” means an entity with whom the State of Oregon enters into an agreement for exchange of interest rates.

(4) “Credit enhancement device”:

(a) Means a letter of credit, line of credit, standby bond purchase agreement, bond insurance policy, reserve surety bond or other device or facility used to enhance the creditworthiness, liquidity or marketability of bonds or agreements for the exchange of interest rates; and

(b) Does not mean a bond.

(5) “Credit enhancement device fee” means a payment required to be made to the provider of a credit enhancement device securing a bond or securing an agreement for the exchange of interest rates.

(6) “General obligation bond” means a bond that constitutes indebtedness of the state under section 7, Article XI of the Oregon Constitution, and that is exempt from the \$50,000 limitation on indebtedness set forth in that section.

(7) **“Operative document” means a bond declaration, trust agreement, indenture, security agreement or other document in which the State of Oregon pledges property as security for an obligation, as defined in ORS 286A.100.**

[7] (8) “Refunding bond” means a bond of the State of Oregon that is issued to refund another bond, regardless of whether the refunding is on a current, advance, forward delivery, synthetic or other basis.

[8] (9) “Related agency” means the state agency that requests the State Treasurer to issue bonds pursuant to ORS 286A.025 or for which the State Treasurer has issued bonds.

[(9)] (10) "Related bond" means a bond for which the State of Oregon enters into an agreement for exchange of interest rates.

[(10)] (11) "Revenue" means all fees, tolls, excise taxes, assessments, property taxes and other taxes, rates, charges, rentals and other income or receipts derived by a state agency or to which a state agency is entitled.

[(11)] (12) "Revenue bond" means a bond of the State of Oregon that is not a general obligation bond.

[(12)] (13) "State agency":

(a) Includes a statewide elected officer, board, commission, department, division, authority or other entity, without regard to the designation given to the entity, that is within state government, as defined in ORS 174.111; and

(b) Does not include:

(A) A statewide elected judge;

(B) The State Treasurer;

(C) A local government, as defined in ORS 174.116;

(D) The Oregon Health and Science University;

(E) A special government body, as defined in ORS 174.117, except to the extent a special government body must be considered a state agency in order to achieve the purposes of Article XI-K of the Oregon Constitution; or

(F) A semi-independent state agency listed in ORS [182.451,] 182.454, 377.835 or 674.305, or any other state agency denominated by statute as a semi-independent state agency.

[(13)] (14) "Termination payment" means the amount payable under an agreement for exchange of interest rates by one party to another party as a result of the termination, in whole or part, of the agreement prior to the expiration of the stated term.

SECTION 8. ORS 286A.100 is amended to read:

286A.100. As used in this section and ORS 286A.102:

(1) "Obligation" means:

(a) A bond;

(b) An agreement for exchange of interest rates with the State of Oregon; or

(c) A credit enhancement device given as additional security for a bond.

[(2)] *"Operative document" means a bond declaration, trust agreement, indenture, security agreement or other document in which the State of Oregon pledges property as security for an obligation.]*

[(3)] (2) "Pledge" means:

(a) To create a security interest in or a lien on property to secure payment or performance of an obligation, by mortgaging, assigning or encumbering property or by creating a security interest in property by any other manner.

(b) A security interest in or lien on property created under paragraph (a) of this subsection.

[(4)] (3) "Pledgee" means:

(a) A trustee for the holder of an obligation; or

(b) The holder of an obligation if a trustee was not appointed in the operative document or if the operative document authorizes the holder of an obligation to foreclose the lien of a pledge and enforce the remedies consequent to the pledge in lieu of the trustee.

[(5)] (4) "Property" means:

(a) Real or personal property, tangible or intangible, whether owned when the pledge is made or acquired subsequently to the time the pledge is made; and

(b) Revenues, contract rights, receivables or securities.

SECTION 9. ORS 287A.001 is amended to read:

287A.001. As used in this chapter:

(1) "Advance refunding bond" means a bond all or part of the proceeds of which are to be used to pay an outstanding bond one year or more after the advance refunding bond is issued.

(2) "Agreement for exchange of interest rates" means a contract, or an option or forward commitment to enter into a contract, for an exchange of interest rates for related bonds that provides for:

(a) Payments based on levels or changes in interest rates; or
(b) Provisions to hedge payment, rate, spread or similar exposure including, but not limited to, an interest rate floor or cap or an option, put or call.

(3) "Bond":

(a) Means a contractual undertaking or instrument of a public body to repay borrowed moneys.

(b) Does not mean a credit enhancement device.

(4) "Capital construction" has the meaning given that term in ORS 310.140.

(5) "Capital improvements" has the meaning given that term in ORS 310.140.

(6) "Credit enhancement device":

(a) Means a letter of credit, line of credit, standby bond purchase agreement, bond insurance policy, reserve surety bond or other device or facility used to enhance the creditworthiness, liquidity or marketability of bonds or agreements for exchange of interest rates.

(b) Does not mean a bond.

(7) "Current refunding bond" means a bond the proceeds of which are to be used to pay **or purchase** an outstanding bond less than one year after the current refunding bond is issued.

(8) "Forward current refunding" means execution and delivery of a purchase agreement or similar instrument under which a public body contracts to sell current refunding bonds for delivery at a future date that is one year or more after execution of the purchase agreement or similar instrument.

(9) "General obligation bond" means exempt bonded indebtedness, as defined in ORS 310.140, that is secured by a commitment to levy ad valorem taxes outside the limits of sections 11 and 11b, Article XI of the Oregon Constitution.

(10) "Lawfully available funds" means revenues or other moneys of a public body including, but not limited to, moneys credited to the general fund of the public body, revenues from an ad valorem tax and revenues derived from other taxes levied by the public body that are not dedicated, restricted or obligated by law or contract to an inconsistent expenditure or use.

(11) "Operative document" means a bond declaration, trust agreement, indenture, security agreement or other document in which a public body pledges revenue or property as security for a bond.

(12) "Pledge" means:

(a) To create a lien on property pursuant to ORS 287A.310.

(b) A lien created on property pursuant to ORS 287A.310.

(13) "Public body" means:

(a) A county of this state;

(b) A city of this state;

(c) A local service district as defined in ORS 174.116 (2);

(d) A special government body as defined in ORS 174.117;

(e) Oregon Health and Science University; or

(f) Any other political subdivision of this state that is authorized by the Legislative Assembly to issue bonds.

(14) "Refunding bond" means an advance refunding bond, a current refunding bond or a forward current refunding bond.

(15) "Related bond" means a bond for which the public body enters into an agreement for exchange of interest rates or obtains a credit enhancement device.

(16) "Revenue" means all fees, tolls, excise taxes, assessments, property taxes and other taxes, rates, charges, rentals and other income or receipts derived by a public body or to which a public body is entitled.

(17) "Revenue bond" means a bond that is not a general obligation bond.

(18) "Termination payment" means the amount payable under an agreement for exchange of interest rates by one party to another party as a result of the termination, in whole or part, of the agreement prior to the expiration of the stated term.

SECTION 10. ORS 456.680 is amended to read:

456.680. *[The Housing and Community Services Department, subject to any existing agreements with its bondholders, may purchase bonds then outstanding out of any funds of the department available therefor under ORS 456.515 to 456.725. Any bonds of the department so purchased shall be canceled. The department may purchase such bonds whether or not such bonds are redeemable at the time of such purchase. If the bonds are then redeemable, the department shall purchase such bonds at a reasonable price not exceeding the redemption price then applicable plus accrued interest to the date of redemption.]* **Except as otherwise provided in the operative documents, the Housing and Community Services Department may acquire outstanding bonds issued on behalf of the department, as provided in section 2 (1) of this 2009 Act, out of moneys described in section 2 (3) of this 2009 Act or other moneys of the department legally available for the purpose under ORS 456.515 to 456.725. If the outstanding bonds are redeemable at the time of acquisition, the department must pay a reasonable price that does not exceed the applicable redemption price plus accrued interest to the date of redemption.**

SECTION 11. (1) Section 2 of this 2009 Act applies to bonds purchased by a related agency or the State Treasurer:

(a) On or after the effective date of this 2009 Act; and

(b) Before the effective date of this 2009 Act if the related agency or the State Treasurer purchased the bonds and the related agency did not elect in writing to cancel or extinguish the bonds.

(2) Section 4 of this 2009 Act applies to bonds purchased by a public body:

(a) On or after the effective date of this 2009 Act; and

(b) Before the effective date of this 2009 Act if the public body acted within its authority to purchase the bonds and did not elect in writing to cancel or extinguish the bonds.

(3) Section 6 of this 2009 Act applies to bonds purchased by the State Treasurer or a trustee on or after the effective date of this 2009 Act.

SECTION 12. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by House May 8, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate June 3, 2009

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President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State