

**Enrolled**  
**House Bill 2107**

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of State Treasurer Randall Edwards for Municipal Debt Advisory Commission)

CHAPTER .....

AN ACT

Relating to public borrowing; creating new provisions; amending ORS 264.250, 264.280, 287A.300, 287A.335, 287A.360, 294.381, 328.565, 351.356, 371.655, 451.545, 757.822, 757.940 and 757.950; and declaring an emergency.

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

**SECTION 1.** ORS 264.250 is amended to read:

264.250. (1) For the purpose of carrying into effect all or any powers granted by this chapter, the district, when authorized at any properly called election held for that purpose, may borrow money and sell and dispose of general obligation bonds. Except as otherwise provided by this section, the bonds shall never exceed in the aggregate two and one-half percent of the real market value of all taxable property within the boundaries of the district, computed in accordance with ORS 308.207.

(2) The bonds shall be issued from time to time by the board of commissioners in behalf of the district as authorized by the electors, *and may be issued in an amount not to exceed one-half of one percent of the real market value referred to in subsection (1) of this section without the approval of the electors*. The bonds shall mature serially within not to exceed 30 years from issue date, and shall bear such rate of interest, payable semiannually, as the board shall determine. The bonds shall be so conditioned that the district agrees to pay to the bearer, at a place named, the principal sum of the bonds with interest at the rate named, payable semiannually in accordance with the tenor and terms of the interest coupons attached.

(3) If the district has within its boundaries a population of 300 or over, it may issue bonds in an amount *[which shall]* **that does** not exceed in the aggregate 10 percent of the real market value referred to in subsection (1) of this section.

(4) For the purpose of *[additionally securing]* **providing additional security for** the payment of the principal and interest on general obligation bonds issued under this section, the district may, by resolution of its board *[which shall constitute part of the contract with the holders of the bonds]*, pledge all or any part of the net revenue of its water system **as provided in ORS chapter 287A**. *[The board may adopt such a resolution without submitting the question of the pledge to the electors of the district.]*

**SECTION 2.** ORS 371.655 is amended to read:

371.655. (1) Except as provided in subsection (2) of this section, 30 days after the assessment is certified, the entire amount against each parcel of land shall be due and payable at the office designated by the governing body of the county and, if not so paid, shall be delinquent from that date and shall bear interest at a rate established by the governing body of the county.

(2) The owner of property assessed under ORS 371.605 to 371.660 shall have the right to apply for installment payment of the assessment as provided in ORS 223.210.

(3) The provisions of ORS 223.205 and 223.210 to 223.314 (Bancroft Bonding Act) and 223.770 relating to the assessment of property benefited by public improvements and to the issuance of bonds and other obligations for the cost of the improvements shall apply in so far as practicable and applicable in relation to the assessment by counties of the cost or any portion of the cost of improvements against the property benefited in accordance with ORS 371.605 to 371.660 and to the issuance of bonds and other obligations by the county. *[However, notwithstanding the provisions of ORS 223.295, in issuing bonds and other obligations under the provisions of this section, a county may incur indebtedness to an amount not exceeding 0.0375 of the latest real market valuation of the county.]*

(4) Where, in ORS 223.205 to 223.314 and 223.770, officials of local governments are referred to, the corresponding officials of counties where applicable and unless otherwise designated by charter shall perform the required functions.

**SECTION 3. Section 4 of this 2009 Act is added to and made a part of ORS chapter 286A.**

**SECTION 4. With the approval of the State Treasurer, a related agency may lend moneys derived from an issuance and sale of bonds to a conduit borrower of proceeds from outstanding, previously issued conduit revenue bonds for the purpose of paying a termination payment due under an agreement for exchange of interest rates entered into by the conduit borrower in relation to the outstanding, previously issued conduit revenue bonds.**

**SECTION 5. Section 6 of this 2009 Act is added to and made a part of ORS chapter 287A.**

**SECTION 6. When a public body is authorized by law to issue bonds, the public body may lend moneys derived from an issuance and sale of bonds to a conduit borrower of proceeds from outstanding, previously issued conduit revenue bonds for the purpose of paying a termination payment required to be paid by the borrower under an agreement for exchange of interest rates entered into by the borrower in relation to the outstanding conduit revenue bonds.**

**SECTION 7. ORS 287A.300 is amended to read:**

287A.300. (1) Notwithstanding a limitation in a local charter, when a public body is authorized by law to issue bonds, the public body may:

(a) Combine bonds authorized by different laws or actions of the governing body into a single issue and use a single disclosure document if the bonds in the issue will have the same security, or may use a single disclosure document for bonds authorized by different laws or actions of the governing body if the bonds have different security.

(b) Structure, market and issue bonds in the manner that the public body determines is in the best interest of the people served by the public body.

(c) Sell bonds at a competitive sale or a negotiated sale or in any other manner determined by the public body.

(d) Issue bonds the interest on which is exempt from federal income taxes or is not exempt from federal income taxes.

(e) Establish the maturity dates for bonds to provide for short-term, interim or long-term borrowing and establish the principal amounts, redemption provisions, optional or mandatory tender provisions, interest rates or method for determining a variable or adjustable interest rate, denominations and other terms and conditions of the bonds.

(f) Determine the form and content of bond disclosure documents.

(g) Enter into an agreement with and retain the services of bond counsel and other providers of bond-related services.

(h) Execute and deliver indentures, bond purchase agreements, trust agreements, remarketing agreements, auction agent agreements, broker dealer agreements, tender agent agreements, escrow agreements and other contracts related to the sale, issuance, security for or administration of the bonds.

(i) Enter into agreements with bond trustees and deposit moneys with trustees for the benefit of bond owners and the providers of credit enhancement devices for bonds.

(j) Enter into covenants for the benefit of bond owners or the providers of credit enhancement devices or agreements for exchange of interest rates, including but not limited to covenants regarding the issuance of additional bonds and rate covenants.

(k) Enter into covenants for the benefit of owners of bonds that are intended to allow bonds to bear interest that is excludable from gross income under the federal Internal Revenue Code or that is otherwise exempt from taxation by the United States.

(L) Take action to comply with covenants.

(m) Establish bond debt service reserves.

(n) Fund debt service reserves out of bond proceeds or from other revenues.

(o) Specify the individuals who may sign the bonds on behalf of the public body.

(2) When the Oregon Constitution, a charter, a statute, an ordinance or a resolution authorizes a public body to spend bond proceeds for a particular purpose, the public body may also spend bond proceeds to finance costs of issuing, administering and repaying the bonds, including costs of the services of bond counsel or other providers of bond-related services, and to pay the costs of a credit enhancement device or agreement for exchange of interest rates.

(3) When a public body redeems bonds, the public body shall give notice of redemption in the manner specified in the documents authorizing the bonds to be redeemed.

(4) A public body may delegate to an elected or appointed official or an employee of the public body the authority to take an action described in subsection (1) of this section.

**(5) Except as provided otherwise in this subsection, at least one of the signatures of bond signatories must be provided in manual form. However, if the bonds are to be authenticated by at least one signature in manual form, all signatures of bond signatories may be in facsimile form.**

**SECTION 8.** ORS 287A.335 is amended to read:

287A.335. (1) As used in this section, "counterparty" means an entity with whom a public body enters into an agreement for exchange of interest rates.

(2) Upon a finding by a public body that an agreement for exchange of interest rates benefits the public body, the public body may enter into the agreement for exchange of interest rates with a counterparty. An agreement for exchange of interest rates may be made to manage payment, interest rate, spread or similar exposure undertaken in connection with related bonds that:

(a) Exist when the agreement for exchange of interest rates is executed;

(b) Are reasonably expected to be executed when regularly scheduled payments are due from the issuer under the agreement; or

(c) Are identified after the agreement for exchange of interest rates is executed and substituted for related bonds described in paragraph (a) or (b) of this subsection as a result of prepayment, re-funding, conversion, ratings changes, redemption, defeasance or other similar event.

(3) Upon entering into an agreement for exchange of interest rates under this section and continuing until the agreement is satisfied, terminated or otherwise no longer in effect, provided a payment default has not occurred, the public body may treat the amount or rate of interest on the related bond as the amount or rate of interest payable after giving effect to the agreement for exchange of interest rates for the purpose of calculating:

(a) Tax levies to pay regularly scheduled bond debt service; and

(b) Other amounts that are based on the rate of interest of the bond.

(4) Subject to covenants applicable to a related bond and the limitations of this section, payments required under an agreement for exchange of interest rates may:

(a) Be treated as interest payments on the related bond;

(b) Be made from revenues or other moneys contributed to or legally available to pay the related bond; and

(c) Rank in an order of priority of payment relative to the payment of the related bond as the public body determines.

(5) In connection with entering into an agreement for exchange of interest rates, a public body may obtain a credit enhancement device to secure the agreement for exchange of interest rates.

(6) An agreement for exchange of interest rates entered into under this section:

(a) Is not a debt or other obligation of the issuer for purposes of any limitation upon the indebtedness of the issuer.

(b) Is subject only to the limitations of this section and is not subject to other limitations applicable to the related borrowing.

(7) A termination payment required to be paid by the public body under an agreement for exchange of interest rates:

(a) **May be paid from moneys derived from the issuance and sale of revenue bonds.**

(b) May not be paid from ad valorem property taxes levied outside the limitations of section 11 or 11b, Article XI of the Oregon Constitution.

(8) The Oregon Municipal Debt Advisory Commission shall adopt administrative rules establishing required terms, conditions, annual or periodic reporting requirements and other requirements for an agreement for exchange of interest rates entered into by a public body, if the commission determines those requirements are desirable to protect the interests of the public body.

(9) A public body may create reserves to pay amounts due under agreements for exchange of interest rates and fund the reserves with moneys derived from the issuance and sale of bonds or from revenues or other moneys described in subsection (4)(b) of this section.

**SECTION 9.** ORS 287A.360 is amended to read:

287A.360. (1) In addition to any other authority to issue refunding bonds, a public body may issue current refunding bonds to refund its outstanding bonds pursuant to this section.

(2) A public body may secure current refunding bonds with any of the revenues and covenants that the public body could have used to secure the refunded bonds and with revenues and covenants authorized by law when the refunding bonds are issued.

(3) A public body may issue:

(a) General obligation bonds to refund outstanding general obligation bonds without obtaining approval of the electors of the public body.

(b) Revenue bonds to refund revenue bonds that were issued in accordance with ORS 287A.150 without complying with the procedures prescribed in ORS 287A.150.

*[(c) General obligation bonds as current refunding bonds with a maturity date not more than 30 days after the maturity date of the elector-approved general obligation bonds to be refunded or the latest maturity date permitted in the elector-approved measure authorizing the refunded bonds, whichever is later. If the total debt service on the current refunding general obligation bonds does not exceed the total debt service on the general obligation bonds to be refunded, the amounts maturing on a given date may be changed, and the current refunding general obligation bonds may mature earlier than the bonds to be refunded.]*

*[(4) A public body may not issue current refunding bonds in an amount that, together with amounts on deposit in sinking funds or other moneys pledged to payment of the principal, exceeds the amount that the public body estimates is required to:]*

*[(a) Pay the refunded bonds or pay a termination payment with respect to an agreement for exchange of interest rates related to the refunded bonds;]*

*[(b) Fund reserves for the current refunding bonds;]*

*[(c) Pay costs of issuing the current refunding bonds and obtaining credit enhancement devices; and]*

*[(d) Pay other costs related to the current refunding bonds.]*

**SECTION 10.** ORS 451.545 is amended to read:

451.545. (1) The district may, when authorized by a majority of the votes cast at an election by electors of the district, issue general obligation bonds for the purpose of paying the cost of acquisition or construction of service facilities. Each issue of general obligation bonds shall be the general obligation of the district and the principal and interest on the bonds shall be paid by the district by assessments, charges, or ad valorem taxes imposed or levied within the district as may

be determined by the governing body of the district under ORS 451.490. Bonds authorized by this section shall be issued in accordance with ORS chapter 287A, except as otherwise provided in this section.

(2) In addition to the authority to issue general obligation bonds, the district, when authorized at any properly called election, shall have the power to sell and dispose of revenue bonds, and to pledge as security for the bonds all or any part of the unobligated net revenue of the district to purchase, acquire, lay out, construct, reconstruct, extend, enlarge or improve service facilities. The revenue bonds shall be issued as prescribed in ORS chapter 287A, but they are payable, both as to principal and interest from revenues only, as specified by this section. The revenue bonds are not subject to the percentage limitation applicable to general obligation bonds and are not a lien upon any of the taxable property within the boundaries of such district, but are payable solely from such part of the revenues of the district as remain after payment of obligations having a priority and of all expenses of operation and maintenance of the district. All revenue bonds shall contain a clause reciting that both the principal and interest are payable solely from operating revenues of the district remaining after paying such obligations and expenses.

(3) The district's total outstanding **general obligation** bonds [*of all kinds*], including improvement bonds of the kind authorized by ORS 223.205 and 223.210 to 223.295, [*shall at no time*] **may not** exceed in the aggregate 13 percent of the real market value of all property by law assessable for state and county purposes within the district as reflected in the last roll certified under ORS 311.105.

**SECTION 11.** ORS 264.280 is amended to read:

264.280. All general obligation and revenue bonds, including refunding bonds, issued under ORS 264.250 to 264.270 shall be advertised and sold in the manner prescribed in ORS [287.014 to 287.022] **chapter 287A** for the sale of bonds of cities of this state.

**SECTION 12.** ORS 351.356 is amended to read:

351.356. (1) As used in this section:

(a) "Bond" means a bond issued under Article XI-F(1) of the Oregon Constitution.

(b) "Credit enhancement device" means a letter of credit, line of credit, bond insurance policy, standby purchase agreement, surety bond or other device or facility used to enhance the creditworthiness, liquidity or marketability of a bond.

(c) "Financial agreement" means an agreement for exchange of interest rates, as defined in ORS [287.025] **286A.001**, a credit enhancement device or an agreement made in connection with a credit enhancement device, that is executed for one or more bonds.

(2) The State of Oregon, acting through the State Board of Higher Education or the State Treasurer, may:

(a) Enter into financial agreements.

(b) Identify, segregate, pledge and agree to pay amounts due under financial agreements entered into under this section from:

(A) The revenues, gifts, grants or building fees that are described in section 2, Article XI-F(1) of the Oregon Constitution; or

(B) The unexpended proceeds of the bonds for which financial agreements are executed.

(c) To the extent permitted by Article XI-F(1) of the Oregon Constitution, issue bonds to secure the state's obligation to make payments under a financial agreement. If a bond is issued under this paragraph, the bond amount shall count toward the limit described in section 1, Article XI-F(1) of the Oregon Constitution, only to the extent that it increases the amount the state is obligated to pay under other bonds.

**SECTION 13.** ORS 757.822 is amended to read:

757.822. (1) Except as provided in subsection (2) of this section, the provisions of ORS chapters 35 (other than ORS 35.550 to 35.575), 180, 190, 192 and 244 and ORS 30.260 to 30.460, 200.005 to 200.025, 200.045 to 200.090, 221.450, 236.605 to 236.640, 243.650 to 243.782 (other than ORS 243.696), 297.040, 307.090 and 307.112 apply to Oregon Community Power under the same terms as they apply to any other subdivision of state government.

(2) Except as otherwise provided by law, the provisions of ORS chapters 182, 183, 238, 238A, 240, 270, 273, 276, 279A, 279B, 279C, 283, 286A, 291, 292, 293, 294, 295 and 297 and ORS 35.550 to 35.575, 183.710 to 183.725, 183.745, 183.750, 184.305 to 184.345, 190.430, 190.480, 190.490, 192.105, 200.035, 236.380, 243.105 to 243.585, 243.696, 278.011 to 278.120, 278.315 to 278.415, 279.835 to 279.855, 282.010 to 282.150, [287.006,] **287A.140, 287A.150, 287A.472**, [288.150 to 288.165, 288.600, 288.815] and 656.017 (2) do not apply to Oregon Community Power.

(3) Oregon Community Power is not a participating public employer in the Public Employees Retirement System.

(4) Any funds held by or under the control of Oregon Community Power are not public funds, as defined in ORS 295.001.

**SECTION 14.** ORS 757.940 is amended to read:

757.940. The board of directors of Oregon Community Power may delegate to any board member, or to the chief executive officer, president, general manager or chief financial officer of Oregon Community Power, the authority to determine maturity dates, principal amounts, redemption provisions, interest rates or methods for determining variable or adjustable interest rates, denominations, methods of sale, agreements for the exchange of interest rates as an issuer under ORS [287.025] **287A.335** and other terms and conditions of a financing agreement that are not appropriately determined at the time of enactment or adoption of a resolution authorizing the execution of the financing agreement. The board may also delegate entering into a financing agreement or any other instrument authorized by law. This delegated authority shall be exercised subject to applicable requirements of law and any limitations and criteria as may be set forth in the resolution authorizing the execution of a financing agreement or in Oregon Community Power bylaws.

**SECTION 15.** ORS 757.950 is amended to read:

757.950. (1) Oregon Community Power may issue and sell revenue bonds [*in accordance with the provisions of the Uniform Revenue Bond Act under ORS 288.805 to 288.945*] **as provided in ORS chapter 287A.** However, ORS [288.815] **287A.150** does not apply to revenue bonds issued by Oregon Community Power. Revenue bonds issued by Oregon Community Power [*may not be*] **are not** a general obligation of Oregon Community Power and may not be a charge upon any revenues or property of Oregon Community Power that is not specifically pledged thereto. Any obligation of any kind incurred by Oregon Community Power under [ORS 288.805 to 288.945] **this section** is not, and may not be considered, an indebtedness of the State of Oregon.

(2) Revenue bonds or other financing agreements issued by Oregon Community Power [*pursuant to ORS 288.805 to 288.945 shall be considered to be*] **under this section are** bonds or obligations of a political subdivision of the State of Oregon for the purposes of all laws of this state.

**SECTION 16.** ORS 294.381 is amended to read:

294.381. (1) Each municipal corporation that has the power to levy an ad valorem property tax shall estimate, in the manner provided in this section, the amount of revenues that will be received in the ensuing year or ensuing budget period through the imposition of taxes upon the taxable property within the municipal corporation.

(2) Subject to the additional adjustments required under subsection [(3)] (4) of this section, the estimated ad valorem taxes that will be received in the ensuing year or ensuing budget period shall not exceed the following:

(a) The amount derived by multiplying the estimated assessed value for the ensuing year or each fiscal year of the ensuing budget period of the taxable property within the municipal corporation, after boundary changes have been filed in final approved form with the county assessor and the Department of Revenue as provided in ORS 308.225, by whichever of the following is applicable to the municipal corporation:

(A) The municipal corporation's permanent rate limit on operating taxes, as defined in ORS 310.202 (7); or

(B) The municipal corporation's statutory rate limit on operating taxes, as defined in ORS 310.202 (10).

(b) If the municipal corporation is authorized to levy a local option tax that was authorized by the electors as a dollar amount, the dollar amount of such local option tax that is authorized to be levied in the ensuing year or ensuing budget period.

(c) If the municipal corporation is authorized to levy a local option tax that was authorized by the electors as a tax rate, the amount derived by multiplying the authorized rate of such local option tax for the ensuing year or ensuing budget period by the estimated assessed value for the ensuing year or each fiscal year of the ensuing budget period of the taxable property within the municipal corporation.

(d) **Subject to subsection (3) of this section**, the municipal corporation's estimate of the amount required to pay the principal and interest on bonded indebtedness that is not subject to limitation under section 11 (11) or section 11b, Article XI of the Oregon Constitution. [*The estimate may include an amount equal to the total of any such payments that are due and payable in the fiscal period following the fiscal period for which the budget is being prepared and before a sufficient amount of property taxes to pay that bonded indebtedness are collected in that fiscal period, pursuant to ORS 294.371. The estimate may also include amounts to reimburse the municipal corporation for the payment of principal and interest on exempt bonded indebtedness that the municipal corporation made from other moneys because collections of taxes levied for exempt bonded indebtedness were not sufficient to pay that exempt bonded indebtedness.*]

(e) The municipal corporation's estimate of the amount required to repay taxing district bond obligations or pension and disability plan obligations described in section 11 (5), Article XI of the Oregon Constitution.

**(3)(a) The estimate described in subsection (2)(d) of this section may include:**

**(A) An amount equal to the total of the payments on the principal and interest on bonded indebtedness that are due and payable in the fiscal period following the fiscal period for which the budget is being prepared and before a sufficient amount of property taxes to pay the bonded indebtedness are collected in that fiscal period, pursuant to ORS 294.371.**

**(B) Amounts to reimburse the municipal corporation for the payment of principal and interest on exempt bonded indebtedness that the municipal corporation made from other moneys because collections of taxes levied for exempt bonded indebtedness were not sufficient to pay the exempt bonded indebtedness.**

**(b) If the bonded indebtedness is a tax credit bond or other bond that bears interest that is includable in gross income under the Internal Revenue Code, as amended and in effect on the effective date of this 2009 Act, the payments described in paragraph (a) of this subsection may include deposits that the municipal corporation has agreed to make in a sinking fund that is dedicated to pay the bonded indebtedness.**

[(3)] **(4)** The amounts determined under subsection (2)(a), (b) and (c) of this section shall be reduced by an amount equal to the estimated amount of such taxes that will not be collected as a result of:

- (a) The discounts allowed under ORS 311.505;
- (b) The limits imposed under ORS 310.150 (3); and
- (c) The failure of taxpayers to pay such taxes in the year for which they are levied.

[(4)(a)] **(5)(a)** The estimated ad valorem taxes determined in accordance with subsection (2)(a), (b) and (c) of this section, prior to adjustment by subsection [(3)] (4) of this section, shall be used by the municipal corporation for purposes of complying with the requirements of ORS 310.060 (1).

(b) The amounts determined under subsection (2)(d) and (e) of this section shall, for purposes of complying with the requirements of ORS 310.060 (1), be increased by an amount equal to the estimated amount of taxes that will not be collected as a result of:

- (A) The discounts allowed under ORS 311.505;
- (B) The limits imposed under ORS 310.150 (3); or
- (C) The failure of taxpayers to pay taxes in the year for which they are levied.

**SECTION 17.** ORS 328.565 is amended to read:

328.565. (1) As used in this section, "qualified zone academy bond" has the meaning given the term in section 1397E of the Internal Revenue Code, as amended and in effect on January 1, 2002.

(2) A district school board may contract indebtedness as provided under ORS 287A.180.

(3) A district school board may issue qualified zone academy bonds or similar tax credit bonds authorized by resolution of the district school board. Unless the bond issue has been approved by electors under ORS 328.205 to 328.304, the district school board must issue [the bonds as revenue bonds under ORS 287A.150] revenue bonds as defined in ORS 287A.001.

**SECTION 18. Sections 4 and 6 of this 2009 Act and the amendments to ORS 264.250, 264.280, 287A.300, 287A.335, 287A.360, 294.381, 328.565, 351.356, 371.655, 451.545, 757.822, 757.940 and 757.950 by sections 1, 2 and 7 to 17 of this 2009 Act apply to bonds issued on or after the effective date of this 2009 Act.**

**SECTION 19. 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 February 19, 2009

Received by Governor:

Repassed by House June 4, 2009

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Approved:

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Chief Clerk of House

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

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Speaker of House

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Governor

Passed by Senate June 3, 2009

Filed in Office of Secretary of State:

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President of Senate

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Secretary of State