

House Bill 2107

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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**.

Modifies maximum limit on amount of bonded indebtedness counties may incur for road improvements in unincorporated areas.

Eliminates provision authorizing domestic water supply districts to borrow money without voter approval.

Authorizes public body borrowers to use bond proceeds to pay termination payments for agreements to exchange interest rates. Authorizes state borrowers and public body borrowers to lend bond proceeds to borrower of moneys from outstanding conduit revenue bonds for payment of termination payments for agreements for exchange of interest rates.

Makes other substantive changes and technical fixes related to revision of bond statutes in 2007 Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public borrowing; creating new provisions; amending ORS 264.250, 264.280, 287A.300,
3 287A.335, 287A.360, 351.356, 371.655, 451.545, 757.822, 757.940 and 757.950; and declaring an
4 emergency.

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

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

7 264.250. (1) For the purpose of carrying into effect all or any powers granted by this chapter,
8 the district, when authorized at any properly called election held for that purpose, may borrow
9 money and sell and dispose of general obligation bonds. Except as otherwise provided by this sec-
10 tion, the bonds shall never exceed in the aggregate two and one-half percent of the real market
11 value of all taxable property within the boundaries of the district, computed in accordance with ORS
12 308.207.

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

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

24 (4) For the purpose of [*additionally securing*] **providing additional security** for the payment of
25 the principal and interest on general obligation bonds issued under this section, the district may,

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 by resolution of its board [*which shall constitute part of the contract with the holders of the bonds*],
 2 pledge all or any part of the net revenue of its water system **as provided in ORS chapter 287A.**
 3 [*The board may adopt such a resolution without submitting the question of the pledge to the electors*
 4 *of the district.*]

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

6 371.655. (1) Except as provided in subsection (2) of this section, 30 days after the assessment is
 7 certified, the entire amount against each parcel of land shall be due and payable at the office des-
 8 ignated by the governing body of the county and, if not so paid, shall be delinquent from that date
 9 and shall bear interest at a rate established by the governing body of the county.

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

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

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

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

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

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

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

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

38 287A.300. (1) Notwithstanding a limitation in a local charter, when a public body is authorized
 39 by law to issue bonds, the public body may:

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

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

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

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

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

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

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

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

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

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

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

24 (L) Take action to comply with covenants.

25 (m) Establish bond debt service reserves.

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

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

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

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

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

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

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

42 287A.335. (1) As used in this section, “counterparty” means an entity with whom a public body
43 enters into an agreement for exchange of interest rates.

44 (2) Upon a finding by a public body that an agreement for exchange of interest rates benefits
45 the public body, the public body may enter into the agreement for exchange of interest rates with

1 a counterparty. An agreement for exchange of interest rates may be made to manage payment, in-
 2 terest rate, spread or similar exposure undertaken in connection with related bonds that:

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (b) Is subject only to the limitations of this section and is not subject to other limitations ap-
 29 plicable to the related borrowing.

30 (7) A termination payment required to be paid by the public body under an agreement for ex-
 31 change of interest rates:

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

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

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

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

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

43 287A.360. (1) In addition to any other authority to issue refunding bonds, a public body may is-
 44 sue current refunding bonds to refund its outstanding bonds pursuant to this section.

45 (2) A public body may secure current refunding bonds with any of the revenues and covenants

1 that the public body could have used to secure the refunded bonds and with revenues and covenants
 2 authorized by law when the refunding bonds are issued.

3 (3) A public body may issue:

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

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

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

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

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

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

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

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

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

25 451.545. (1) The district may, when authorized by a majority of the votes cast at an election by
 26 electors of the district, issue general obligation bonds for the purpose of paying the cost of acqui-
 27 sition or construction of service facilities. Each issue of general obligation bonds shall be the gen-
 28 eral obligation of the district and the principal and interest on the bonds shall be paid by the
 29 district by assessments, charges, or ad valorem taxes imposed or levied within the district as may
 30 be determined by the governing body of the district under ORS 451.490. Bonds authorized by this
 31 section shall be issued in accordance with ORS chapter 287A, except as otherwise provided in this
 32 section.

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

45 (3) The district's total outstanding **general obligation** bonds *[of all kinds]*, including improve-

1 ment bonds of the kind authorized by ORS 223.205 and 223.210 to 223.295, [*shall at no time*] **may**
 2 **not** exceed in the aggregate 13 percent of the real market value of all property by law assessable
 3 for state and county purposes within the district as reflected in the last roll certified under ORS
 4 311.105.

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

6 264.280. All general obligation and revenue bonds, including refunding bonds, issued under ORS
 7 264.250 to 264.270 shall be advertised and sold in the manner prescribed in ORS [*287.014 to*
 8 *287.022*] **chapter 287A** for the sale of bonds of cities of this state.

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

10 351.356. (1) As used in this section:

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

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

15 (c) “Financial agreement” means an agreement for exchange of interest rates, as defined in ORS
 16 [*287.025*] **286A.001**, a credit enhancement device or an agreement made in connection with a credit
 17 enhancement device, that is executed for one or more bonds.

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

20 (a) Enter into financial agreements.

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

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

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

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

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

32 757.822. (1) Except as provided in subsection (2) of this section, the provisions of ORS chapters
 33 35 (other than ORS 35.550 to 35.575), 180, 190, 192 and 244 and ORS 30.260 to 30.460, 200.005 to
 34 200.025, 200.045 to 200.090, 221.450, 236.605 to 236.640, 243.650 to 243.782 (other than ORS 243.696),
 35 297.040, 307.090 and 307.112 apply to Oregon Community Power under the same terms as they apply
 36 to any other subdivision of state government.

37 (2) Except as otherwise provided by law, the provisions of ORS chapters 182, 183, 238, 238A, 240,
 38 270, 273, 276, 279A, 279B, 279C, 283, 286A, 291, 292, 293, 294, 295 and 297 and ORS 35.550 to 35.575,
 39 183.710 to 183.725, 183.745, 183.750, 184.305 to 184.345, 190.430, 190.480, 190.490, 192.105, 200.035,
 40 236.380, 243.105 to 243.585, 243.696, 278.011 to 278.120, 278.315 to 278.415, 279.835 to 279.855, 282.010
 41 to 282.150, [*287.006,*] **287A.140, 287A.150, 287A.472**[, *288.150 to 288.165, 288.600, 288.815*] and 656.017
 42 (2) do not apply to Oregon Community Power.

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

45 (4) Any funds held by or under the control of Oregon Community Power are not public funds,

1 as defined in ORS 295.001.

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

3 757.940. The board of directors of Oregon Community Power may delegate to any board member,
 4 or to the chief executive officer, president, general manager or chief financial officer of Oregon
 5 Community Power, the authority to determine maturity dates, principal amounts, redemption pro-
 6 visions, interest rates or methods for determining variable or adjustable interest rates, denomi-
 7 nations, methods of sale, agreements for the exchange of interest rates as an issuer under ORS
 8 [287.025] **287A.335** and other terms and conditions of a financing agreement that are not appropri-
 9 ately determined at the time of enactment or adoption of a resolution authorizing the execution of
 10 the financing agreement. The board may also delegate entering into a financing agreement or any
 11 other instrument authorized by law. This delegated authority shall be exercised subject to applicable
 12 requirements of law and any limitations and criteria as may be set forth in the resolution authoriz-
 13 ing the execution of a financing agreement or in Oregon Community Power bylaws.

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

15 757.950. (1) Oregon Community Power may issue and sell revenue bonds [*in accordance with the*
 16 *provisions of the Uniform Revenue Bond Act under ORS 288.805 to 288.945*] **as provided in ORS**
 17 **chapter 287A.** However, ORS [288.815] **287A.150** does not apply to revenue bonds issued by Oregon
 18 Community Power. Revenue bonds issued by Oregon Community Power [*may not be*] **are not** a gen-
 19 eral obligation of Oregon Community Power and may not be a charge upon any revenues or property
 20 of Oregon Community Power that is not specifically pledged thereto. Any obligation of any kind
 21 incurred by Oregon Community Power under [ORS 288.805 to 288.945] **this section** is not, and may
 22 not be considered, an indebtedness of the State of Oregon.

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

26 **SECTION 16. Sections 4 and 6 of this 2009 Act and the amendments to ORS 264.250,**
 27 **264.280, 287A.300, 287A.335, 287A.360, 351.356, 371.655, 451.545, 757.822, 757.940 and 757.950 by**
 28 **sections 1, 2 and 7 to 15 of this 2009 Act apply to bonds issued on or after the effective date**
 29 **of this 2009 Act.**

30 **SECTION 17. This 2009 Act being necessary for the immediate preservation of the public**
 31 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
 32 **on its passage.**

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