

Enrolled House Bill 3646

Sponsored by Representative FREDERICK; Representatives BAILEY, BARKER, BARTON, BUCKLEY, CLEM, DEMBROW, DOHERTY, GELSER, GREENLICK, HOLVEY, KAHL, MATTHEWS, READ, STIEGLER, WITT, Senators BATES, METSGER, SHIELDS (Pre-session filed.)

CHAPTER

AN ACT

Relating to public borrowing; creating new provisions; amending ORS 286A.145, 289.005, 289.110, 289.200, 289.215 and 289.220; and declaring an emergency.

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

SECTION 1. ORS 289.005 is amended to read:

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

- (1) "Authority" means the Oregon Facilities Authority created by this chapter.
- (2) "Bonds" or "revenue bonds" means revenue bonds, as defined in ORS 286A.001.
- (3) "Cost" means the cost of:

(a) Construction, acquisition, alteration, enlargement, reconstruction and remodeling of a project, including all lands, structures, real or personal property, rights, rights of way, air rights, franchises, easements and interests acquired or used for or in connection with a project;

(b) [*Demolishing or removing any*] **Demolition or removal** of buildings or structures on land as acquired, including the cost of acquiring [*any*] lands to which [*such*] **the** buildings or structures may be moved;

(c) All machinery and equipment;

(d) Financing charges, interest prior to, during and for a period after completion of construction and acquisition, reasonably required amounts to make the project operational, provisions for reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations and improvements;

(e) Architectural, actuarial engineering, financial and legal services, plans specifications, studies, surveys, estimates of costs and of revenues, administrative expenses, expenses necessary or incident to determining the feasibility or practicability of constructing the project;

(f) Management, operation or funding of a qualified program; and

[(f)] **(g)** [*Such*] Other expenses [*as may be*] **that are** necessary or incident to a project, the financing of [*such*] **the** project [*and*] **or** the placing of the project in operation.

(4) "Cultural institution" means a public or nonprofit institution within this state which engages in the cultural, intellectual, scientific, environmental, educational or artistic enrichment of the people of this state. "Cultural institution" includes, without limitation, aquaria, botanical societies, historical societies, land conservation organizations, libraries, museums, performing arts associations or societies, scientific societies, wildlife conservation organizations and zoological societies.

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

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

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

(7) “Institution” means a cultural institution, a health care institution, a housing institution, an institution for higher education, an institution for prekindergarten through grade 12 education, a school for persons with disabilities or another nonprofit.

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

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

(10) “Nonprofit” means an institution, organization or entity within this state exempt from taxation under section 501(c)(3) of the Internal Revenue Code as defined in ORS 314.011.

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

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

(B) In the case of a participating institution that is a housing institution, a structure or structures suitable for use as housing, including residences or multiunit housing facilities, administration buildings, maintenance, storage or utility facilities and other structures or facilities related to any of the structures required or used for the operation of the housing, including parking and other facilities or structures essential or convenient for the orderly provision of such housing. It shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the particular housing facility or structure in the manner for which its use is intended and shall further include any furnishings, equipment, machinery and other similar

items necessary or convenient for the provision of housing, whether or not such items are related to a particular facility or structure financed under this chapter.

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

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

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

(F) In the case of a participating institution, costs to manage, operate or fund a qualified program or costs to alleviate interim cash flow deficits of the institution.

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

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

(12) "Qualified program" means a financing program, or other activities, of a participating institution that is eligible for financing through the issuance of revenue bonds the interest on which is:

(a) Excluded from gross income for federal income tax purposes; or

(b) Eligible for a federal tax credit or subsidy under the Internal Revenue Code.

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

SECTION 2. ORS 289.110 is amended to read:

289.110. (1) In addition to any other powers granted by law, the state, acting through the State Treasurer or a designee of the State Treasurer, may:

(a) Enter into agreements to finance the costs of an eligible project by lending the proceeds of bonds authorized by this chapter to a participating institution under terms and with security approved by the state.

(b) Lease and sublease eligible projects to a participating institution subject to subsection (2) of this section.

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

(d) Mortgage or otherwise encumber eligible projects in favor of the holders of bonds issued under this chapter or a trustee for the holders without obligating the state except with respect to the project.

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

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

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

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

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

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

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

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

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

SECTION 3. ORS 289.200 is amended to read:

289.200. (1) If the State Treasurer determines that revenue bonds should be issued:

(a) The State Treasurer may authorize and issue in the name of the State of Oregon revenue bonds secured by revenues from eligible projects to finance or refinance in whole or part the cost of acquisition, purchase, construction, reconstruction, installations improvement, betterment, [or] extension, **management, operation or funding** of projects. The bonds shall be identified by project and issued in the manner prescribed by ORS chapter 286A.

(b) The State Treasurer shall designate the trustee, financial advisor and bond counsel, if any, and enter into appropriate agreements with each to carry out the provisions of this chapter. An agreement with bond counsel designated by the State Treasurer under this section is subject to the provisions related to services provided by bond counsel under ORS 286A.130. The powers conferred

on a related agency under ORS chapter 286A do not apply to the Oregon Facilities Authority with respect to the designation of trustee, financial advisor and bond counsel.

(2) Any trustee designated by the State Treasurer to carry out all or part of the powers specified in ORS 289.110 must agree to furnish financial statements and audit reports for each bond issue.

(3) The State Treasurer *[shall be]* **is** the applicable elected representative for purposes of approving the issuance of revenue bonds under this chapter *[as]* to the extent *[such]* approval is required under section 147(f) of the Internal Revenue Code.

(4) The State Treasurer shall collect data from the authority regarding the amount and nature of bonded indebtedness in Oregon health care institutions financed through the authority.

SECTION 4. ORS 289.215 is amended to read:

289.215. The validity of bonds issued under this chapter *[shall not be dependent on nor be]* **is not dependent on or** affected by the validity or regularity of any proceeding relating to the acquisition, purchase, construction, reconstruction, installation, improvement, betterment, *[or]* extension, **management, operation or funding** of the project for which the bonds are issued. The official action authorizing such bonds may provide that the bonds shall contain a recital that they are issued pursuant to this chapter and such recital shall be conclusive evidence of their validity and of the regularity of their issuance.

SECTION 5. ORS 289.220 is amended to read:

289.220. The official action authorizing the issuance of bonds under this chapter to finance or refinance, in whole or in part, the acquisition, purchase, construction, reconstruction, installation, improvement, betterment, *[or]* extension, **management, operation or funding** of *[any]* a project may contain covenants~~, notwithstanding that such covenants may~~ **that** limit the exercises of powers conferred by this chapter in the following respects and in *[such]* other respects as the state, acting through the State Treasurer, or the designee of the treasurer may decide:

(1) The rents to be charged for the use of properties acquired, purchased, constructed, reconstructed, installed, improved, bettered, *[or]* extended, **managed, operated or funded** under the authority of this chapter;

(2) The use and disposition of the revenues of *[such]* projects;

(3) The creation and maintenance of sinking funds and the regulation, use and disposition thereof;

(4) The creation and maintenance of funds to provide for maintaining the eligible project and replacement of properties depreciated, damaged, destroyed or condemned;

(5) The purpose or purposes to which the proceeds of sale of bonds may be applied and the use and disposition of such proceeds;

(6) The nature of mortgages or other encumbrances on the eligible project made in favor of the holder or holders of such bonds or a trustee therefor;

(7) The events of default and the rights and liabilities arising thereon and the terms and conditions upon which the holders of any bonds may bring any suit or action on such bonds or on any coupons appurtenant thereto;

(8) The issuance of other or additional bonds or instruments payable from or constituting a charge against the revenue of the eligible project;

(9) The insurance to be carried upon the eligible project and the use and disposition of insurance moneys;

(10) The keeping of books of account and the inspection and audit thereof;

(11) The terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and the terms and conditions upon which such declaration and its consequences may be waived;

(12) The rights, liabilities, powers and duties arising upon the breach by the municipality or redevelopment agency of any covenants, conditions or obligations;

(13) The appointing of and vesting in a trustee or trustees of the right to enforce any covenants made to secure or to pay the bonds, the powers and duties of such trustee or trustees and the limitation of their liabilities;

(14) The terms and conditions upon which the holder or holders of the bonds, or the holders of any proportion or percentage of them, may enforce any covenants made under this chapter;

(15) A procedure by which the terms of any official action authorizing bonds or of any other contract with bondholders, including but not limited to an indenture of trust or similar instrument, may be amended or abrogated, and the amount of bonds the holders of which may consent thereto, and the manner in which such consent may be given; and

(16) The subordination of the security of any bonds issued under this chapter and the payment of principal and interest thereof, to the extent considered feasible and desirable by the state, to other bonds or obligations of the state issued to finance the eligible project or that may be outstanding when the bonds thus subordinated are issued and delivered.

SECTION 6. ORS 286A.145 is amended to read:

286A.145. (1) The State Treasurer or a related agency may enter into covenants for the benefit of owners of bonds that are intended to allow the bonds to bear interest that is [*excludable*] **excluded** from gross income under the federal Internal Revenue Code or that is otherwise exempt from taxation by the United States. The State Treasurer or a related agency may adopt rules or procedures that are intended to facilitate compliance with those covenants, and may take any action that is required to comply with those covenants. Covenants authorized by this [*section*] **subsection** include, but are not limited to, covenants to:

[1] (a) Pay any rebates of earnings or penalties to the United States;

[2] (b) Invest proceeds alone or in combination with other moneys in investments that have different maturities, yields or credit qualities than the state would acquire under the investment standards specified in ORS 293.721 and 293.726 and other similar laws, but only if those investments facilitate compliance with covenants described in this [*section*] **subsection**; or

[3] (c) Restrict the expenditure of bond proceeds or restrict the operation of, or otherwise limit the use of, facilities that are financed with bonds.

(2) **When the State of Oregon receives interest rate subsidies from the United States in connection with bonds, the State Treasurer or the related agency, to the extent permitted by federal law, may:**

(a) **Apply the subsidies to pay bonds of the related agency and credit the subsidies to an account that is used to pay bonds of the related agency;**

(b) **Pledge the subsidies to secure bonds of the related agency; or**

(c) **Use the subsidies to pay costs that would otherwise be paid with proceeds of bonds of the related agency and credit the subsidies to accounts that are used to pay the costs.**

SECTION 7. (1) The amendments to ORS 289.005, 289.110, 289.200, 289.215 and 289.220 by sections 1 to 5 of this 2010 Act apply to revenue bonds issued pursuant to ORS 289.200 on or after the effective date of this 2010 Act.

(2) The amendments to ORS 286A.145 by section 6 of this 2010 Act apply to moneys remaining in a fund or account that were received to subsidize the borrowing costs of the State of Oregon before, on or after the effective date of this 2010 Act.

SECTION 8. This 2010 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect on its passage.

Passed by House February 12, 2010

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Chief Clerk of House

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Speaker of House

Passed by Senate February 20, 2010

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President of Senate

Received by Governor:

.....M,....., 2010

Approved:

.....M,....., 2010

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Governor

Filed in Office of Secretary of State:

.....M,....., 2010

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Secretary of State