

SENATE BILL 20**MUNICIPAL DEBT ADVISORY COMMISSION'S HOUSEKEEPING AND CLARIFICATIONS****BACKGROUND:**

The Municipal Debt Advisory Commission (MDAC) – which includes local government finance representatives as well as public members and a designee of the State Treasury – has identified five shortcomings in state laws governing the issuance of local debt. These changes will have few practical effects, but were requested in large part by the State's bond counsel for clarification purposes. Many of these changes apply to the Oregon Law Commission's recent re-write of the local bonding statutes in ORS 287A.

EFFECTS OF LEGISLATION:**1. Providing for the Purchase of Outstanding Bonds**

In 287A.360(1), SB 20 provides for the purchase of current refunding bonds. This is a potential way for local governments to "refinance" debt and save on borrowing costs.

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

2. Costs of Hospital Facility Authorities' Bond Conversions

Under Oregon Revised Statutes Sections 441.525 through 441.505 (the "Act"), hospital facility authorities ("Authorities") may issue conduit revenue bonds and loan the proceeds thereof to borrowers such as nonprofit hospitals, adult congregate living facilities and other similar healthcare-related entities. Borrowers can use bond proceeds only for costs that fit within the broad categories authorized in the Act. Due to the severe economic climate of the past several years, many healthcare borrowers have sought to convert, purchase, refund or otherwise restructure previously issued bonds, including nonperforming auction rate bonds and insured variable rate bonds.

Converting bonds from one interest rate mode to another has proved a popular way for borrowers to restructure bonds bearing interest at unreasonably high rates. In many cases, borrowers seek to use proceeds of newly issued Authority bonds to pay costs associated with converting another series of bonds. Such conversion costs can include investment banking fees, legal fees and expenses related to preparing disclosure materials. Although MDAC believes the Act allows these costs to be paid from bond proceeds, SB 20 would amend the Act to make such authorization more express and specific.

3. Conforming Timeline for Challenges

In 2005, the legislature created a process for a local government to clarify the expected use of general obligation bond proceeds that could, if petitioned, be adjudicated in the Oregon Tax Court. This process was added to ORS 305.583, which was the statute that prescribed the process for a taxpayer to petition certain determinations related to the taxpayer's property taxes. MDAC has noticed a procedural inconsistency in the petitioning process related to property taxes and the use of bond proceeds. The timeframe for challenging determinations related to property taxes is generally 60 days from the determination date (i.e., the resolution or

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ordinance adoption date of the governing body) and the timeframe for challenging the use of general obligation bond proceeds is 60 days from the date of publication of the notice subsequent to the action of the governing body. SB 20 would make these procedures in this same statute consistent, and the timeframe for filing a petition related to the use of general obligation bond proceeds would also be 60 days from the date of action.

4. Local Government Flexibility

ORS 287A.300 currently authorizes an Oregon local government with bonding authority great flexibility to determine the terms, conditions and structure of its bond issue notwithstanding limitations in local charters. However, there are some limitations buried in local government statutes that still include very prescriptive language about the terms, conditions and structure of local government bonds. (For example, ORS Chapter 450 related to sanitary districts outlines specific interest payment dates, denominations of sanitary district bonds, and prescribes how the debt service must be structured.) SB 20 broadens the introductory language in ORS 287A.300(a) to allow a local government to rely on the bond statutes for purposes of structuring their bonds notwithstanding limitations in local charters and other statutes of the local government.

5. Current and Advance Refunding Clarification

ORS 287A.360 and ORS 287A.365 authorize current and advance refundings, respectively. When the Oregon Law Commission rewrote the public finance statutes, the Commission focused its efforts on giving local governments flexibility, rather than prescribing how local governments should structure their financings. The current and advance refunding provisions that were previously scattered throughout the public finance statutes were confusing and in some cases, unnecessarily restrictive. The law commission bill consolidated those statutes into one statute authorizing current refundings and one statute authorizing advance refundings. After working with these statutes for a few years, MDA^C has found that the statutes require clarification. The following are examples of these proposed clarifications:

- ORS 287A.360 may unintentionally eliminate a local government's ability to issue current refunding revenue bonds by limiting the government's authority to issue such bonds solely under ORS 287A.360. SB 20 clarifies this unintended limitation by removing the phrase "pursuant to this statute" in ORS 287A.360(1).
- The refunding bond statutes can be read to require a local government to go through more extensive revenue bond authorization procedures under ORS 287A.150 (formerly known as the Uniform Revenue Bond Act, and which subjects the authorization to referral) in order to issue revenue refunding bonds to refund loans secured by the same revenues (e.g., loans with the Infrastructure Finance Authority). SB 20 would grant local governments the ability to issue revenue refunding bonds to refund outstanding revenue bonds, including loans, without going through the ORS 287A.150 procedure *as long as the refunding is done to achieve debt service savings and the security remains the same.*

RECOMMENDATION:

Approve SB 20, as amended with Treasury's recommendations.