

Enrolled Senate Bill 18

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of State Treasurer Ted Wheeler)

CHAPTER

AN ACT

Relating to borrowing for capital costs of school districts; creating new provisions; amending ORS 348.696, 461.540 and 461.558 and section 8, chapter 21, Oregon Laws 2010, section 13, chapter 96, Oregon Laws 2010, and section 5, chapter 104, Oregon Laws 2010; repealing section 9, chapter 21, Oregon Laws 2010; appropriating money; and declaring an emergency.

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

SECTION 1. As used in sections 1 to 6 of this 2011 Act:

(1) **“Article XI-P bonds” means general obligation bonds issued under the authority of Article XI-P of the Oregon Constitution.**

(2) **“Bond-related costs” means:**

(a) **The costs of paying the principal of, the interest on and the premium, if any, on Article XI-P bonds.**

(b) **The costs and expenses of issuing, administering and maintaining Article XI-P bonds including, but not limited to, the costs and expenses of:**

(A) **Redeeming Article XI-P bonds.**

(B) **Paying amounts due in connection with credit enhancement devices or agreements for exchange of interest rates.**

(C) **Paying the fees, administrative costs and expenses of the State Treasurer, the Oregon Department of Administrative Services and the Department of Education, including the costs of consultants or advisors retained by the State Treasurer, the Oregon Department of Administrative Services or the Department of Education for the Article XI-P bonds.**

(c) **The costs of funding reserves for the Article XI-P bonds.**

(d) **Capitalized interest for the Article XI-P bonds.**

(e) **Rebates or penalties due to the United States in connection with the Article XI-P bonds.**

(f) **Any other costs or expenses that the State Treasurer, the Oregon Department of Administrative Services or the Department of Education determines are necessary or desirable in connection with issuing and maintaining the Article XI-P bonds.**

(3) **“Capital costs” means costs of land and of other assets having a useful life of more than one year, including costs associated with acquisition, construction, improvement, remodeling, furnishing, equipping, maintenance or repair.**

SECTION 2. (1) In accordance with the applicable provisions of ORS chapter 286A, the State Treasurer, with the concurrence of the Director of the Oregon Department of Administrative Services, may issue Article XI-P bonds:

(a) At the request of the Superintendent of Public Instruction for the purposes specified in Article XI-P of the Oregon Constitution, plus an amount determined by the State Treasurer to pay estimated bond-related costs; and

(b) Subject to the budget authorization for bond issuance established under ORS 286A.035 for the Department of Education for the biennium.

(2) The State Treasurer may issue Article XI-P bonds for the purpose of refunding Article XI-P bonds.

(3) The net proceeds of Article XI-P bonds must be deposited in the School Capital Matching Fund established under section 6 of this 2011 Act as described in section 4, Article XI-P of the Oregon Constitution.

(4) If at any time the superintendent determines that the net proceeds of Article XI-P bonds deposited in the School Capital Matching Fund pursuant to subsection (3) of this section exceed the amount necessary for the purposes described in subsection (1)(a) of this section and the budget authorization, the superintendent may transfer the excess amount to the Article XI-P Bond Fund established under section 4 of this 2011 Act or the Article XI-P Bond Administration Fund established under section 5 of this 2011 Act.

(5) Article XI-P bonds are a general obligation of the State of Oregon and must contain a direct promise on behalf of the State of Oregon to pay the principal of, the interest on and the premium, if any, on the Article XI-P bonds. The State of Oregon shall pledge its full faith and credit and taxing power to the payment of the principal of, the interest on and the premium, if any, on Article XI-P bonds, except that the ad valorem taxing power of the State of Oregon may not be pledged to pay Article XI-P bonds.

SECTION 3. (1) The State Board of Education shall establish by rule a program to provide school districts with matching fund grants or loans for the capital costs of school districts financed with the net proceeds of Article XI-P bonds issued under sections 1 to 6 of this 2011 Act. The state board shall establish, by rule, ratios for matching local moneys with grants, and ratios for matching local moneys with loans.

(2) The Department of Education, subject to rules adopted by the state board:

(a) May provide matching funds only to a school district that has received voter approval for local general obligation bonds to finance capital costs.

(b) May not provide financing through grants or loans to finance operating costs of school districts.

SECTION 4. (1) The Article XI-P Bond Fund is established in the State Treasury, separate and distinct from the General Fund. Amounts in the Article XI-P Bond Fund may be invested as provided in ORS 293.701 to 293.820, and interest earned on the bond fund must be credited to the bond fund. Amounts credited to the bond fund are continuously appropriated to the Department of Education for the purpose of paying, when due, the principal of, the interest on and the premium, if any, on outstanding Article XI-P bonds. The department shall deposit in the bond fund:

(a) Capitalized or accrued interest on Article XI-P bonds;

(b) Amounts appropriated or otherwise provided by the Legislative Assembly for deposit in the bond fund;

(c) Reserves established for the payment of Article XI-P bonds; and

(d) Amounts transferred from the School Capital Matching Fund established under section 6 of this 2011 Act as described in section 4, Article XI-P of the Oregon Constitution.

(2) At the request of the department, the State Treasurer may create separate accounts in the bond fund for reserves and debt service for each series of Article XI-P bonds as provided in ORS 286A.025 (2)(g).

SECTION 5. (1) The Article XI-P Bond Administration Fund is established in the State Treasury, separate and distinct from the General Fund. Amounts in the Article XI-P Bond Administration Fund may be invested as provided in ORS 293.701 to 293.820, and interest earned on the bond administration fund must be credited to the bond administration fund. Amounts credited to the bond administration fund are continuously appropriated to the Department of Education for payment of bond-related costs. The department shall credit to the bond administration fund:

- (a) Proceeds of Article XI-P bonds that were issued to pay bond-related costs;
- (b) Amounts appropriated or otherwise provided by the Legislative Assembly for deposit in the bond administration fund; and
- (c) Amounts transferred from the School Capital Matching Fund established under section 6 of this 2011 Act as described in section 4, Article XI-P of the Oregon Constitution.

(2) At the request of the department, the State Treasurer may create separate accounts in the bond administration fund as provided in ORS 286A.025 (2)(g).

SECTION 6. Pursuant to section 4, Article XI-P of the Oregon Constitution, the School Capital Matching Fund is established in the State Treasury, separate and distinct from the General Fund. Amounts in the School Capital Matching Fund may be invested as provided in ORS 286A.025 (2)(g), and interest earned on moneys in the fund must be credited to the fund. The School Capital Matching Fund consists of net proceeds of Article XI-P bonds issued under sections 1 to 6 of this 2011 Act, moneys from the repayment of loans by school districts, moneys transferred to the fund pursuant to ORS 461.558 and other moneys made available by the Legislative Assembly for purposes described in section 2 (1) of this 2011 Act and the budget authorization for bond issuance established under ORS 286A.035 for the Department of Education. Moneys in the fund are continuously appropriated to the Department of Education for the purposes described in section 2 (1) of this 2011 Act and the budget authorization.

SECTION 7. ORS 348.696 is amended to read:

348.696. Pursuant to section 4 (4)(d), Article XV of the Oregon Constitution, the Education Stability Fund is established separate and distinct from the General Fund. [*Except for earnings on moneys in the school capital matching subaccount,*] Moneys in the **Education Stability** Fund shall be invested as provided in ORS 293.701 to 293.790. All declared earnings on moneys in the fund shall be transferred and are appropriated continuously as follows:

- (1) 75 percent to the Oregon Education Fund established by ORS 348.716; and
- (2) 25 percent to the Oregon Student Assistance Commission for the Oregon Opportunity Grant program under ORS 348.260.

SECTION 8. ORS 461.540 is amended to read:

461.540. (1) There is established in the General Fund of the State Treasury the Administrative Services Economic Development Fund. All moneys transferred from the State Lottery Fund, interest earnings credited to this fund and other moneys authorized to be transferred to this fund from whatever source are appropriated continuously for any of the following public purposes:

- (a) Creating jobs;
 - (b) Furthering economic development in Oregon; or
 - (c) Financing public education.
- (2) Moneys shall be transferred from the Administrative Services Economic Development Fund to:

(a) The Education Stability Fund established under ORS 348.696 as described in section 4, Article XV of the Oregon Constitution; and

[(b) The school capital matching subaccount created within the Education Stability Fund, as provided by ORS 461.558.]

(b) The School Capital Matching Fund established under section 6 of this 2011 Act as described in section 4, Article XI-P of the Oregon Constitution.

(3) As used in this section and section 4, Article XV of the Oregon Constitution:

- (a) "Creating jobs" includes, but is not limited to:
 - (A) Supporting the creation of new jobs in Oregon;
 - (B) Helping prevent the loss of existing jobs in Oregon;
 - (C) Assisting with work transition to new jobs in Oregon; or
 - (D) Training or retraining workers.
- (b) "Education" includes, but is not limited to, the Education Stability Fund established under ORS 348.696 and specific programs that support the following:
 - (A) Prekindergartens;
 - (B) Elementary and secondary schools;
 - (C) Community colleges;
 - (D) Higher education;
 - (E) Continuing education;
 - (F) Workforce training and education programs; or
 - (G) Financial assistance to Oregon students.
- (c) "Furthering economic development" includes, but is not limited to, providing:
 - (A) Services or financial assistance to for-profit and nonprofit businesses located or to be located in Oregon;
 - (B) Services or financial assistance to business or industry associations to promote, expand or prevent the decline of their businesses; or
 - (C) Services or financial assistance for facilities, physical environments or development projects, as defined in ORS 285B.410, that benefit Oregon's economy.

SECTION 9. ORS 461.558 is amended to read:

461.558. (1) As used in this section, "lottery ending balance" means an amount that equals the difference between:

- (a) The amount of moneys available for allocation in the Administrative Services Economic Development Fund during a biennium; and
- (b) The amount of allocations made from the fund during the biennium, including any amounts appropriated to the Oregon Department of Administrative Services under ORS 291.285 to maintain accountability of the fund.

(2) As soon as practicable after the end of each biennium, the lottery ending balance shall be transferred to the *[school capital matching subaccount created within the Education Stability Fund by section 4 (8), Article XV of the Oregon Constitution]* **School Capital Matching Fund established under section 6 of this 2011 Act as described in section 4, Article XI-P of the Oregon Constitution.**

SECTION 10. Section 13, chapter 96, Oregon Laws 2010, is amended to read:

Sec. 13. (1) Notwithstanding ORS 461.558 and except as provided in subsection (2) of this section, for the biennium beginning July 1, 2009, the amount of the lottery ending balance transferred as provided in ORS 461.558 to the *[school capital matching subaccount created within the Education Stability Fund by section 4 (8), Article XV of the Oregon Constitution]* **School Capital Matching Fund established under section 6 of this 2011 Act as described in section 4, Article XI-P of the Oregon Constitution**, shall be an amount equal to the greater of:

- (a) The difference between the lottery ending balance and the total amount of the decreases in allocations made by sections 1 to 11, **chapter 96, Oregon Laws 2010** *[of this 2010 Act]*; or
- (b) Zero.

(2) For purposes of subsection (1) of this section, the decreases in allocations made by sections 1 to 11, **chapter 96, Oregon Laws 2010**, *[of this 2010 Act]* do not include the decrease made by section 6 (3), **chapter 96, Oregon Laws 2010** *[of this 2010 Act]*.

SECTION 11. Section 5, chapter 104, Oregon Laws 2010, is amended to read:

Sec. 5. (1) Based on the findings in section 1, **chapter 104, Oregon Laws 2010**, *[of this 2010 Act,]* and pursuant to section 4 (6), Article XV of the Oregon Constitution, on May 1, 2011, the State Treasurer shall transfer from the Education Stability Fund established under section 4 (4)(d), Article XV of the Oregon Constitution, and ORS 348.696 to the Supplemental School District and School

Program Subaccount established by section 4, **chapter 104, Oregon Laws 2010**, [of this 2010 Act] an amount equal to the lesser of:

(a) The difference between \$200 million and the total amount of the appropriations to the Supplemental School District and School Program Subaccount made under sections 8 and 9, chapter 635, Oregon Laws 2009, as determined under section 10, chapter 635, Oregon Laws 2009; or

(b) The balance of the Education Stability Fund at the close of the last business day preceding the date of the transfer.

(2) Moneys transferred under this section may be used in the manner provided by section 7, **chapter 104, Oregon Laws 2010**, [of this 2010 Act] for moneys in the Supplemental School District and School Program Subaccount.

(3) As used in this section, "balance of the Education Stability Fund" means all moneys in the fund except for moneys in the Oregon Growth Account[,] **and** the Oregon Resource and Technology Development Subaccount [and the school capital matching subaccount].

SECTION 12. Section 8, chapter 21, Oregon Laws 2010, is amended to read:

Sec. 8. (1) As used in this section, "qualified revenue bonds" means revenue bonds, as defined in ORS 287A.001, that:

[a] *Are sold during calendar year 2010;*

[b] (a) Meet the definition of "qualified school construction bonds," as defined in section 1521 of the federal American Recovery and Reinvestment Act of 2009 (P.L. 111-5) **or the description of "qualified zone academy bonds," in section 54E(a) of the Internal Revenue Code of 1986, as amended;** and

[c] (b) Are sold with other revenue bonds under a program that is facilitated by a statewide organization that represents school boards.

(2) A school district or an education service district may enter into a funds diversion agreement with the Department of Education for the purpose of making debt service payments on qualified revenue bonds.

(3) A funds diversion agreement entered into under this section must contain all of the following provisions:

(a) Moneys payable to the school district or education service district by the department from the State School Fund will be paid directly to a debt service account in amounts equal to the lesser of:

(A) The amount available to the district for disbursement from the fund; or

(B) The amount of the debt service owed by the school district or education service district.

(b) The department must pay the amounts required under the funds diversion agreement to the debt service account specified by the school district or education service district.

(c) The department must pay the amounts required under the funds diversion agreement pursuant to the schedule specified in the agreement prior to paying any other amounts to the school district or education service district, except for any funds claimed pursuant to ORS 238.698 or 328.346.

(d) The agreement may not be revoked by the school district or education service district.

(e) The agreement will remain in effect until all payments for the qualified revenue bonds have been made.

(4) If the department is not able to pay moneys to a debt service account as required by a funds diversion agreement, the department shall give notice to the school district or education service district within 30 days after becoming aware that the moneys will not be paid according to the agreement. The department is not liable to any holder of qualified revenue bonds, or any trustee of a holder, or any other party for a failure to pay moneys as required under the funds diversion agreement.

(5) Nothing in this section or in a funds diversion agreement entered into under this section obligates the state or the department to pay an amount to a school district or education service district that is more than amounts the school district or education service district is otherwise en-

titled to receive from the State School Fund or to pay debt service on qualified revenue bonds issued by the school district or education service district.

SECTION 13. Section 9, chapter 21, Oregon Laws 2010, is repealed.

SECTION 14. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by Senate June 17, 2011

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 22, 2011

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Received by Governor:

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Approved:

.....M,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

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Kate Brown, Secretary of State