

Enrolled
House Bill 3464

Sponsored by Representative MCKEOWN; Representatives BENTZ, GORSEK, HARKER, HUFFMAN, KOMP, KRIEGER, MCLANE, PARRISH, UNGER, Senators JOHNSON, KRUSE, ROBLAN, WHITSETT

CHAPTER

AN ACT

Relating to public borrowing for Coos Bay channel project; amending sections 13 and 14, chapter 746, Oregon Laws 2007; and declaring an emergency.

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

SECTION 1. Section 13, chapter 746, Oregon Laws 2007, as amended by section 1, chapter 900, Oregon Laws 2009, is amended to read:

Sec. 13. (1) In addition to amounts authorized under ORS 286.505 to 286.545 (2005 Edition) or pursuant to ORS 286A.035, the State Treasurer, at the request of the Director of the [*Economic and Community*] **Oregon Business** Development Department, may issue lottery bonds pursuant to ORS 286A.560 to 286A.585:

(a) In an amount of up to \$60 million for payment of the expenses of the Coos Bay Channel Project in increments described in subsection (2) of this section; and

(b) In an additional amount to be estimated by the State Treasurer for payment of bond-related costs of the Oregon Department of Administrative Services, the [*Economic and Community*] **Oregon Business** Development Department and the State Treasurer.

(2) The director shall request **that** the State Treasurer [*to*] issue the amount of bonds described in subsection (1)(a) of this section in increments that allow the director, at the request of the primary sponsor, to transfer:

(a) In the biennium beginning July 1, 2007, up to \$5 million in net proceeds of lottery bonds to the Coos Bay Channel Fund established in section 15, chapter 746, Oregon Laws 2007, for distribution to the primary sponsor after the director finds that the primary sponsor has taken action pursuant to the grant agreement required in section 14, chapter 746, Oregon Laws 2007, that triggers the distribution of bond proceeds described in this paragraph.

(b) In the biennium beginning July 1, [*2011*] **2015**, up to \$15 million in net proceeds of lottery bonds to the Coos Bay Channel Fund established in section 15, chapter 746, Oregon Laws 2007, for distribution to the primary sponsor after the director finds that the primary sponsor has taken action pursuant to the grant agreement required in section 14, chapter 746, Oregon Laws 2007, that triggers the distribution of bond proceeds described in this paragraph.

(c) In the biennium beginning July 1, [*2013*] **2017**, up to \$40 million in net proceeds of lottery bonds to the Coos Bay Channel Fund established in section 15, chapter 746, Oregon Laws 2007, for distribution to the primary sponsor after the director finds that the primary sponsor has taken action pursuant to the grant agreement required in section 14, chapter 746, Oregon Laws 2007, that triggers the distribution of bond proceeds described in this paragraph.

SECTION 2. Section 14, chapter 746, Oregon Laws 2007, as amended by section 2, chapter 900, Oregon Laws 2009, is amended to read:

Sec. 14. (1) The Director of the [*Economic and Community*] **Oregon Business** Development Department shall enter into one or more grant agreements with the primary sponsor that require the [*Economic and Community*] **Oregon Business** Development Department to disburse, over the course of the project, an aggregate principal amount of \$60 million for payment of the expenses of the Coos Bay Channel Project, in the increments described in section 13 (2), chapter 746, Oregon Laws 2007, from the Coos Bay Channel Fund established pursuant to section 15, chapter 746, Oregon Laws 2007, to the primary sponsor. The department shall make disbursements from the fund as soon as bond proceeds are deposited in the fund.

(2) The one or more grant agreements must:

(a) Subject to subsection (4) of this section, establish appropriate triggers for the incremental biennial distribution of bond proceeds described in section 13 (2), chapter 746, Oregon Laws 2007, based on appropriate measures of progress in completion of the project that are satisfactory to the director and consistent with prudent financial practices that reflect sound stewardship of public resources.

(b) Require the primary sponsor to:

(A) Return bond proceeds distributed and reimburse the State of Oregon for expenditures made pursuant to sections 11 to 15, chapter 746, Oregon Laws 2007, if the director determines that the project is not substantially completed by July 1, [2021] **2023**, unless the project is not substantially completed:

(i) Due to an act of God; or

(ii) Because the State of Oregon fails to distribute one or more of the increments of bond proceeds described in section 13 (2), chapter 746, Oregon Laws 2007, and required to substantially complete the project, for a reason other than a failure of the primary sponsor to take action to trigger the distribution or a failure of the project to meet federal or state environmental permitting standards necessary to complete the project.

(B) Provide evidence satisfactory to the director that the primary sponsor has obtained a letter of credit, entered into a surety bond agreement or provided other similar financial assurance to guarantee the return of bond proceeds and reimbursement for expenditures required by this paragraph.

(3) Notwithstanding subsection (2)(b)(B) of this section, the primary sponsor may choose to guarantee the bond proceeds distributed and the state expenditures made in the biennium beginning July 1, 2007, by converting the amount into a loan subject to an agreement that allows the primary sponsor to repay the amount over time at terms provided for in the grant agreement.

(4)(a) Prior to the distribution of bond proceeds described in section 13 (2)(a), chapter 746, Oregon Laws 2007, the primary sponsor shall provide to the director a budget document outlining expenditures for the Coos Bay Channel Project and verify and certify to the director that:

(A) The primary sponsor has entered into a commercially reasonable agreement with a cargo terminal developer to construct and operate cargo terminal facilities on the Coos Bay channel;

(B) The Secretary of the Army has authorized the performance of environmental studies on the channel pursuant to section 203 of the Water Resources Development Act of 1986 (P.L. 99-662); and

(C) The cargo terminal developer has entered into, or made appropriate progress in negotiations toward, a contract with rail service providers to ensure adequate rail infrastructure and service capacity to serve the cargo terminal facilities to be developed as part of the Coos Bay Channel Project.

(b) Prior to the distribution of bond proceeds described in section 13 (2)(b), chapter 746, Oregon Laws 2007, the primary sponsor shall provide an updated budget document outlining expenditures for the Coos Bay Channel Project and verify and certify to the director that:

(A) The Secretary of the Army has provided a favorable recommendation to Congress to proceed with the Coos Bay Channel Project; and

(B) The primary sponsor has obtained, or has reasonable assurance of obtaining, adequate funding to complete permitting and engineering work on the Coos Bay Channel Project.

(c) Prior to the distribution of bond proceeds described in section 13 (2)(c), chapter 746, Oregon Laws 2007, the primary sponsor shall provide an updated budget outlining expenditures for the completion of the Coos Bay Channel Project and verify and certify to the director that:

(A) The sponsor has received the necessary approvals and permits under ORS 196.600 to 196.905 and section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) to allow the Coos Bay Channel Project to be completed; and

(B) The primary sponsor has obtained, or has reasonable assurance of obtaining, adequate funding to complete the Coos Bay Channel Project.

(5) The State of Oregon and its agencies and departments are not liable to the lenders, vendors or contractors of the Oregon sponsors for any action or omission under sections 11 to 15, chapter 746, Oregon Laws 2007.

(6) By receipt of any part of net proceeds of lottery bonds described in section 13, chapter 746, Oregon Laws 2007, the primary sponsor agrees to indemnify the state and its agencies and departments to the fullest extent permitted by law for liability the state or its agencies and departments might incur in connection with any borrowing by the primary sponsor for the project.

(7) The director and the primary sponsor shall modify the existing grant agreement as may be necessary to incorporate the amendments to this section and section 13, chapter 746, Oregon Laws 2007, by sections 1 and 2 of this 2013 Act.

SECTION 3. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by House July 6, 2013

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate July 7, 2013

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2013

Approved:

.....M.,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2013

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Kate Brown, Secretary of State