

House Bill 3464

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

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 schedule and conditions for issuance of lottery bonds to pay costs of Coos Bay Channel Project.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public borrowing for Coos Bay channel project; amending sections 11, 13 and 14, chapter
3 746, Oregon Laws 2007; and declaring an emergency.

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

5 **SECTION 1.** Section 11, chapter 746, Oregon Laws 2007, is amended to read:

6 **Sec. 11.** As used in sections 11 to 15 *[of this 2007 Act]*, **chapter 746, Oregon Laws 2007:**

7 *[(1) "Act of God" means an unanticipated grave natural disaster or other natural phenomenon of*
8 *an exceptional, inevitable and irresistible character, the effects of which could not have been prevented*
9 *or avoided by the exercise of due care or foresight.]*

10 *[(2)] (1)* "Coos Bay Channel Project" means a project to deepen and widen the lower Coos Bay
11 deep draft navigation channel, west of the Coos Bay railroad bridge, to perform ecosystem investi-
12 gation and restoration projects and to make additional navigational system improvements including,
13 but not limited to, structural work at the entrance jetties, navigation aids and other design or en-
14 gineering tasks.

15 *[(3)] (2)* "Oregon sponsors" means the Oregon International Port of Coos Bay or any agency
16 acting as a financial contributor to the Coos Bay Channel Project.

17 *[(4)] (3)* "Primary sponsor" means the Oregon International Port of Coos Bay as representative
18 of the Oregon sponsors.

19 **SECTION 2.** Section 13, chapter 746, Oregon Laws 2007, as amended by section 1, chapter 900,
20 Oregon Laws 2009, is amended to read:

21 **Sec. 13.** (1) In addition to amounts authorized under ORS 286.505 to 286.545 (2005 Edition) or
22 pursuant to ORS 286A.035, the State Treasurer, at the request of the Director of the *[Economic and*
23 *Community]* **Oregon Business** Development Department, may issue lottery bonds pursuant to ORS
24 286A.560 to 286A.585:

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

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

30 (2) The director shall request **that** the State Treasurer *[to]* issue the amount of bonds described

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 in subsection (1)(a) of this section in increments that allow the director, at the request of the pri-
 2 mary sponsor, to transfer:

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

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

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

18 **SECTION 3.** Section 14, chapter 746, Oregon Laws 2007, as amended by section 2, chapter 900,
 19 Oregon Laws 2009, is amended to read:

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

28 (2) The one or more grant agreements must,[:]

29 [(a)] subject to subsection [(4)] **(3)** of this section, establish appropriate triggers for the incre-
 30 mental biennial distribution of bond proceeds described in section 13 (2), chapter 746, Oregon Laws
 31 2007, based on appropriate measures of progress in completion of the project that are satisfactory
 32 to the director and consistent with prudent financial practices that reflect sound stewardship of
 33 public resources.

34 [(b) *Require the primary sponsor to:*]

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

38 [(i) *Due to an act of God; or*]

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

44 [(B) *Provide evidence satisfactory to the director that the primary sponsor has obtained a letter of*
 45 *credit, entered into a surety bond agreement or provided other similar financial assurance to guarantee*

1 *the return of bond proceeds and reimbursement for expenditures required by this paragraph.]*

2 [(3) *Notwithstanding subsection (2)(b)(B) of this section, the primary sponsor may choose to guar-*
3 *antee the bond proceeds distributed and the state expenditures made in the biennium beginning July*
4 *1, 2007, by converting the amount into a loan subject to an agreement that allows the primary sponsor*
5 *to repay the amount over time at terms provided for in the grant agreement.]*

6 [(4)(a)] (3)(a) Prior to the distribution of bond proceeds described in section 13 (2)(a), chapter
7 746, Oregon Laws 2007, the primary sponsor shall provide to the director a budget document out-
8 lining expenditures for the Coos Bay Channel Project and verify and certify to the director that:

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

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

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

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

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

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

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

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

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

32 [(5)] (4) The State of Oregon and its agencies and departments are not liable to the lenders,
33 vendors or contractors of the Oregon sponsors for any action or omission under sections 11 to 15,
34 chapter 746, Oregon Laws 2007.

35 [(6)] (5) By receipt of any part of net proceeds of lottery bonds described in section 13, chapter
36 746, Oregon Laws 2007, the primary sponsor agrees to indemnify the state and its agencies and de-
37 partments to the fullest extent permitted by law for liability the state or its agencies and depart-
38 ments might incur in connection with any borrowing by the primary sponsor for the project.

39 **(6) The director and the primary sponsor shall modify the existing grant agreement as**
40 **may be necessary to incorporate the amendments to this section and sections 11 and 13,**
41 **chapter 746, Oregon Laws 2007, by sections 1 to 3 of this 2013 Act.**

42 **SECTION 4. This 2013 Act being necessary for the immediate preservation of the public**
43 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
44 **on its passage.**