

A-Engrossed
Senate Bill 547

Ordered by the Senate April 24
Including Senate Amendments dated April 24

Sponsored by COMMITTEE ON FINANCE AND REVENUE

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.

Authorizes cities and counties to incur exempt bonded indebtedness to finance capital costs.
Defines "capital costs."
Declares emergency, effective July 1, 2013.

A BILL FOR AN ACT

1
2 Relating to capital costs financed with local bonded indebtedness; amending ORS 198.810, 287A.001,
3 287A.050, 287A.100, 287A.145, 305.586 and 310.140; and declaring an emergency.

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

5 **SECTION 1.** ORS 310.140, as amended by section 17, chapter 31, Oregon Laws 2012, is amended
6 to read:

7 310.140. (1) The Legislative Assembly finds that [*section 11b,*] Article XI, **section 11b**, of the
8 Oregon Constitution, was drafted by citizens and placed before the voters of the State of Oregon
9 by initiative petition. [*Section 11b,*] Article XI, **section 11b**, of the Oregon Constitution, uses terms
10 that do not have established legal meanings and require definition by the Legislative Assembly.
11 [*Section 11b,*] Article XI, **section 11b**, of the Oregon Constitution, was amended by [*section 11*
12 (*11*),] Article XI, **section 11 (11)**, of the Oregon Constitution. This section is intended to interpret
13 the terms of [*section 11b,*] Article XI, **section 11b**, of the Oregon Constitution, as originally adopted
14 and as amended by [*section 11 (11),*] Article XI, **section 11 (11)**, of the Oregon Constitution, con-
15 sistent with the intent of the people in adopting these provisions, so that the provisions of [*section*
16 (*11b*),] Article XI, **section 11b**, of the Oregon Constitution, may be given effect uniformly throughout
17 the State of Oregon, with minimal confusion and misunderstanding by citizens and affected units of
18 government. As used in the revenue and tax laws of this state, and for purposes of [*section 11b,*]
19 Article XI, **section 11b**, of the Oregon Constitution:

20 [(1)] (a)(A) "Actual cost" means all direct or indirect costs incurred by a government unit in
21 order to deliver goods or services or to undertake a capital construction project. The "actual
22 cost" of providing goods or services to a property or property owner includes the average cost or
23 an allocated portion of the total amount of the actual cost of making a good or service available to
24 the property or property owner, whether stated as a minimum, fixed or variable amount.

25 (B) "Actual cost" includes, but is not limited to, the costs of labor, materials, supplies, equip-
26 ment rental, property acquisition, permits, engineering, financing, reasonable program delinquencies,
27 return on investment, required fees, insurance, administration, accounting, depreciation, amorti-
28 zation, operation, maintenance, repair or replacement and debt service, including debt service pay-

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 ments or payments into reserve accounts for debt service and payment of amounts necessary to meet
2 debt service coverage requirements.

3 [(2)] (b) "Assessment for local improvement" means any tax, fee, charge or assessment that does
4 not exceed the actual cost incurred by a unit of government for design, construction and financing
5 of a local improvement.

6 [(3)] (c) "Bonded indebtedness" means any formally executed written agreement representing a
7 promise by a unit of government to pay to another a specified sum of money, at a specified date or
8 dates at least one year in the future.

9 [(4) "*Capital construction*":]

10 [(a)] (d)(A) "**Capital construction**" means, for bonded indebtedness issued prior to December
11 5, 1996, and for the proceeds of any bonded indebtedness approved by electors prior to December
12 5, 1996, that were spent or contractually obligated to be spent prior to June 20, 1997, [means] the
13 construction, modification, replacement, repair, remodeling or renovation of a structure, or addition
14 to a structure, that is expected to have a useful life of more than one year, and includes, but is not
15 limited to:

16 [(A)] (i) Acquisition of land, or a legal interest in land, in conjunction with the capital con-
17 struction of a structure.

18 [(B)] (ii) Acquisition, installation of machinery or equipment, furnishings or materials that will
19 become an integral part of a structure.

20 [(C)] (iii) Activities related to the capital construction, including planning, design, authorizing,
21 issuing, carrying or repaying interim or permanent financing, research, land use and environmental
22 impact studies, acquisition of permits or licenses or other services connected with the construction.

23 [(D)] (iv) Acquisition of existing structures, or legal interests in structures, in conjunction with
24 the capital construction.

25 [(b)] (B) "**Capital construction,**" for bonded indebtedness issued on or after December 5, 1996,
26 except for the proceeds of any bonded indebtedness approved by electors prior to December 5, 1996,
27 that were spent or contractually obligated to be spent before June 20, 1997, has the meaning given
28 that term in [paragraph (a) of this subsection, except that "*capital construction*":] **subparagraph (A)**
29 **of this paragraph except as provided in subparagraphs (C) and (D) of this paragraph.**

30 [(A)] (C) "**Capital construction**" includes public safety and law enforcement vehicles with a
31 projected useful life of five years or more.[: and]

32 [(B)] (D) "**Capital construction**" does not include:

33 (i) Maintenance and repairs, the need for which could be reasonably anticipated;

34 (ii) Supplies and equipment that are not intrinsic to the structure; or

35 (iii) Furnishings, unless the furnishings are acquired in connection with the acquisition, con-
36 struction, remodeling or renovation of a structure, or the repair of a structure that is required be-
37 cause of damage or destruction of the structure.

38 (e)(A) "**Capital costs**" means costs of land and of other assets having a useful life of more
39 than one year, including costs associated with acquisition, construction, improvement, re-
40 modeling, furnishing, equipping, maintenance or repair.

41 (B) "**Capital costs**" does not include costs of routine maintenance or supplies.

42 [(5) "*Capital improvements*":]

43 [(a)] (f)(A) "**Capital improvements**" means, for bonded indebtedness issued prior to December
44 5, 1996, and for the proceeds of any bonded indebtedness approved by electors before December 5,
45 1996, that were spent or contractually obligated to be spent before June 20, 1997, [means] land,

1 structures, facilities, personal property that is functionally related and subordinate to real property,
2 machinery, equipment or furnishings having a useful life longer than one year.

3 [(b)] **(B) “Capital improvements,”** for bonded indebtedness issued on or after December 5, 1996,
4 except for the proceeds of any bonded indebtedness approved by electors prior to December 5, 1996,
5 that were spent or contractually obligated to be spent before June 20, 1997, has the meaning given
6 that term in [paragraph (a) of this subsection, except that “capital improvements”:] **subparagraph (A)**
7 **of this paragraph except as provided in subparagraphs (C) and (D) of this paragraph.**

8 [(A)] **(C) “Capital improvements”** includes public safety and law enforcement vehicles with a
9 projected useful life of five years or more.[: and]

10 [(B)] **(D) “Capital improvements”** does not include:

11 (i) Maintenance and repairs, the need for which could be reasonably anticipated;

12 (ii) Supplies and equipment that are not intrinsic to the structure; or

13 (iii) Furnishings, unless the furnishings are acquired in connection with the acquisition, con-
14 struction, remodeling or renovation of a structure, or the repair of a structure that is required be-
15 cause of damage or destruction of the structure.

16 [(6)] **(g) “Direct consequence of ownership”** means that the obligation of the owner of property
17 to pay a tax arises solely because that person is the owner of the property, and the obligation to
18 pay the tax arises as an immediate and necessary result of that ownership without respect to any
19 other intervening transaction, condition or event.

20 [(7)(a)] **(h)(A) “Exempt bonded indebtedness”** means:

21 [(A)] **(i)** Bonded indebtedness authorized by a specific provision of the Oregon Constitution;

22 [(B)] **(ii)** Bonded indebtedness incurred or to be incurred for capital construction or capital im-
23 provements that was issued as a general obligation of the issuing governmental unit on or before
24 November 6, 1990;

25 [(C)] **(iii)** Bonded indebtedness incurred or to be incurred for capital construction or capital
26 improvements that was issued as a general obligation of the issuing governmental unit after No-
27 vember 6, 1990, with the approval of the electors of the issuing governmental unit **prior to De-**
28 **cember 5, 1996;** [or]

29 [(D)] **(iv)** Bonded indebtedness incurred or to be incurred for capital construction or capital
30 improvements[,] if the issuance of the bonds is approved by voters on or after December 5, 1996, in
31 an election that is in compliance with the voter participation requirements of [section 11 (8),] Article
32 XI, **section 11 (8),** of the Oregon Constitution[,], **or if the issuance of the bonds is approved by**
33 **voters on or after December 4, 2008, in an election that is in compliance with the voter**
34 **participation requirements of Article XI, section 11 (8), of the Oregon Constitution, as lim-**
35 **ited by Article XI, section 11k, of the Oregon Constitution; or**

36 **(v) Bonded indebtedness incurred or to be incurred for capital costs on or after January**
37 **1, 2011, if the issuance of the bonds is approved by voters in an election that is in compliance**
38 **with the voter participation requirements of Article XI, section 11 (8), of the Oregon Con-**
39 **stitution, as limited by Article XI, section 11k, of the Oregon Constitution.**

40 [(b)] **(B) “Exempt bonded indebtedness”** includes bonded indebtedness issued to refund or refi-
41 nance any bonded indebtedness described in [paragraph (a) of this subsection] **subparagraph (A) of**
42 **this paragraph.**

43 [(8)(a)] **(i) “Incurred charge”** means a charge imposed by a unit of government on property or
44 upon a property owner that does not exceed the actual cost of providing goods or services and that
45 can be controlled or avoided by the property owner because:

1 (A) The charge is based on the quantity of the goods or services used, and the owner has direct
2 control over the quantity;

3 (B) The goods or services are provided only on the specific request of the property owner; or

4 (C) The goods or services are provided by the government unit only after the individual property
5 owner has failed to meet routine obligations of ownership of the affected property, and such action
6 is deemed necessary by an appropriate government unit to enforce regulations pertaining to health
7 or safety.

8 *[(b) For purposes of this subsection, an owner of property may control or avoid an incurred charge
9 if the owner is capable of taking action to affect the amount of a charge that is or will be imposed or
10 to avoid imposition of a charge even if the owner must incur expense in so doing.]*

11 *[(c) For purposes of paragraph (a)(A) of this subsection, an owner of property has direct control
12 over the quantity of goods or services if the owner of property has the ability, whether or not that
13 ability is exercised, to determine the quantity of goods or services provided or to be provided.]*

14 [(9)(a)] (j) “Local improvement” means a capital construction project, or part thereof, under-
15 taken by a local government, pursuant to ORS 223.387 to 223.399, or pursuant to a local ordinance
16 or resolution prescribing the procedure to be followed in making local assessments for benefits from
17 a local improvement upon the lots that have been benefited by all or a part of the improvement:

18 (A) That provides a special benefit only to specific properties or rectifies a problem caused by
19 specific properties;

20 (B) The costs of which are assessed against those properties in a single assessment upon the
21 completion of the project; and

22 (C) For which the property owner may elect to make payment of the assessment plus appropriate
23 interest over a period of at least 10 years.

24 *[(b) For purposes of paragraph (a) of this subsection, the status of a capital construction project
25 as a local improvement is not affected by the accrual of a general benefit to property other than the
26 property receiving the special benefit.]*

27 [(10) “Maintenance and repairs, the need for which could be reasonably anticipated”:]

28 [(a)] (k)(A) **“Maintenance and repairs, the need for which could be reasonably
29 anticipated”** means activities, the type of which may be deducted as an expense under the pro-
30 visions of the federal Internal Revenue Code, as amended and in effect on December 31, 2011, that
31 keep the property in ordinarily efficient operating condition and that do not add materially to the
32 value of the property nor appreciably prolong the life of the property.[;]

33 [(b)] (B) **“Maintenance and repairs, the need for which could be reasonably anticipated”**
34 does not include:

35 (i) Maintenance and repair of property that is required by damage, destruction or defect in de-
36 sign, or that was otherwise not reasonably expected at the time the property was constructed or
37 acquired, or the addition of material that is in the nature of the replacement of property and that
38 arrests the deterioration or appreciably prolongs the useful life of the property; and

39 [(c)] (ii) *[Does not include]* Street and highway construction, overlay and reconstruction.

40 [(11)] (L) “Projected useful life” means the useful life, as reasonably estimated by the unit of
41 government undertaking the capital construction or capital improvement project, beginning with the
42 date the property was acquired, constructed or reconstructed and based on the property’s condition
43 at the time the property was acquired, constructed or reconstructed.

44 [(12)] (m) “Routine obligations of ownership” means a standard of operation, maintenance, use
45 or care of property established by law, or if established by custom or common law, a standard that

1 is reasonable for the type of property affected.

2 [(13)] (n) “Single assessment” means the complete assessment process, including preassessment,
3 assessment or reassessment, for any local improvement authorized by ORS 223.387 to 223.399, or a
4 local ordinance or resolution that provides the procedure to be followed in making local assessments
5 for benefits from a local improvement upon lots that have been benefited by all or part of the im-
6 provement.

7 [(14)] (o) “Special benefit only to specific properties” shall have the same meaning as “special
8 and peculiar benefit” as that term is used in ORS 223.389.

9 [(15)] (p) “Specific request” means:

10 [(a)] (A) An affirmative act by a property owner to seek or obtain delivery of goods or services;

11 [(b)] (B) An affirmative act by a property owner, the legal consequence of which is to cause the
12 delivery of goods or services to the property owner; or

13 [(c)] (C) Failure of an owner of property to change a request for goods or services made by a
14 prior owner of the property.

15 [(16)] (q) “Structure” means any temporary or permanent building or improvement to real
16 property of any kind that is constructed on or attached to real property, whether above, on or be-
17 neath the surface.

18 [(17)] (r) “Supplies and equipment intrinsic to a structure” means the supplies and equipment
19 that are necessary to permit a structure to perform the functions for which the structure was con-
20 structed, or that will, upon installation, constitute fixtures considered to be part of the real property
21 that is comprised, in whole or part, of the structure and land supporting the structure.

22 [(18)] (s) “Tax on property” means any tax, fee, charge or assessment imposed by any govern-
23 ment unit upon property or upon a property owner as a direct consequence of ownership of that
24 property, but does not include incurred charges or assessments for local improvements. As used in
25 this [subsection] **paragraph**, “property” means real or tangible personal property, and intangible
26 property that is part of a unit of real or tangible personal property to the extent that such intan-
27 gible property is subject to a tax on property.

28 **(2) For purposes of subsection (1)(i) of this section, an owner of property may control or**
29 **avoid an incurred charge if the owner is capable of taking action to affect the amount of a**
30 **charge that is or will be imposed or to avoid imposition of a charge even if the owner must**
31 **incur expense in so doing.**

32 **(3) For purposes of subsection (1)(i)(A) of this section, an owner of property has direct**
33 **control over the quantity of goods or services if the owner of property has the ability,**
34 **whether or not that ability is exercised, to determine the quantity of goods or services pro-**
35 **vided or to be provided.**

36 **(4) For purposes of subsection (1)(j) of this section, the status of a capital construction**
37 **project as a local improvement is not affected by the accrual of a general benefit to property**
38 **other than the property receiving the special benefit.**

39 **SECTION 2.** ORS 287A.001 is amended to read:

40 287A.001. As used in this chapter:

41 (1) “Advance refunding bond” means a bond all or part of the proceeds of which are to be used
42 to pay an outstanding bond one year or more after the advance refunding bond is issued.

43 (2) “Agreement for exchange of interest rates” means a contract, or an option or forward com-
44 mitment to enter into a contract, for an exchange of interest rates for related bonds that provides
45 for:

1 (a) Payments based on levels or changes in interest rates; or

2 (b) Provisions to hedge payment, rate, spread or similar exposure including, but not limited to,
3 an interest rate floor or cap or an option, put or call.

4 [(3) *“Bond”*:]

5 [(a)] (3)(a) **“Bond”** means a contractual undertaking or instrument of a public body to repay
6 borrowed moneys.

7 (b) **“Bond”** does not mean a credit enhancement device.

8 (4) **“Capital construction”** has the meaning given that term in ORS 310.140.

9 **(5) “Capital costs” has the meaning given that term in ORS 310.140.**

10 [(5)] (6) **“Capital improvements”** has the meaning given that term in ORS 310.140.

11 [(6) *“Credit enhancement device”*:]

12 [(a)] (7)(a) **“Credit enhancement device”** means a letter of credit, line of credit, standby bond
13 purchase agreement, bond insurance policy, reserve surety bond or other device or facility used to
14 enhance the creditworthiness, liquidity or marketability of bonds or agreements for exchange of in-
15 terest rates.

16 (b) **“Credit enhancement device”** does not mean a bond.

17 [(7)] (8) **“Current refunding bond”** means a bond the proceeds of which are to be used to pay
18 or purchase an outstanding bond less than one year after the current refunding bond is issued.

19 [(8)] (9) **“Forward current refunding”** means execution and delivery of a purchase agreement or
20 similar instrument under which a public body contracts to sell current refunding bonds for delivery
21 at a future date that is one year or more after execution of the purchase agreement or similar in-
22 strument.

23 [(9)] (10) **“General obligation bond”** means exempt bonded indebtedness, as defined in ORS
24 310.140, that is secured by a commitment to levy ad valorem taxes outside the limits of sections 11
25 and 11b, Article XI, of the Oregon Constitution.

26 [(10)] (11) **“Lawfully available funds”** means revenues or other moneys of a public body includ-
27 ing, but not limited to, moneys credited to the general fund of the public body, revenues from an
28 ad valorem tax and revenues derived from other taxes levied by the public body that are not dedi-
29 cated, restricted or obligated by law or contract to an inconsistent expenditure or use.

30 [(11)] (12) **“Operative document”** means a bond declaration, trust agreement, indenture, security
31 agreement or other document in which a public body pledges revenue or property as security for a
32 bond.

33 [(12)] (13) **“Pledge”** means:

34 (a) To create a lien on property pursuant to ORS 287A.310.

35 (b) A lien created on property pursuant to ORS 287A.310.

36 [(13)] (14) **“Public body”** means:

37 (a) A county of this state;

38 (b) A city of this state;

39 (c) A local service district as defined in ORS 174.116 (2);

40 (d) A special government body as defined in ORS 174.117;

41 (e) Oregon Health and Science University; or

42 (f) Any other political subdivision of this state that is authorized by the Legislative Assembly
43 to issue bonds.

44 [(14)] (15) **“Refunding bond”** means an advance refunding bond, a current refunding bond or a
45 forward current refunding bond.

1 [(15)] (16) “Related bond” means a bond for which the public body enters into an agreement for
2 exchange of interest rates or obtains a credit enhancement device.

3 [(16)] (17) “Revenue” means all fees, tolls, excise taxes, assessments, property taxes and other
4 taxes, rates, charges, rentals and other income or receipts derived by a public body or to which a
5 public body is entitled.

6 [(17)] (18) “Revenue bond” means a bond that is not a general obligation bond.

7 [(18)] (19) “Termination payment” means the amount payable under an agreement for exchange
8 of interest rates by one party to another party as a result of the termination, in whole or part, of
9 the agreement prior to the expiration of the stated term.

10 **SECTION 3.** ORS 287A.050 is amended to read:

11 287A.050. [(1) *A city may issue general obligation bonds to finance capital construction or capital*
12 *improvements upon approval of the electors of the city.*]

13 **(1) Upon approval of the electors of a city, the city may issue general obligation bonds**
14 **to finance:**

15 **(a) Capital construction or capital improvements permitted by Article XI, sections 11 and**
16 **11b, of the Oregon Constitution.**

17 **(b) Capital costs permitted by Article XI, section 11L, of the Oregon Constitution.**

18 (2) Unless the city charter provides a lesser limitation, a city may not issue or have outstanding
19 at the time of issuance general obligation bonds in a principal amount that exceeds three percent
20 of the real market value of the taxable property within its boundaries, calculated as provided in ORS
21 308.207.

22 (3) The limitation described in subsection (2) of this section does not apply to general obligation
23 bonds issued:

24 **(a)** To finance the costs of local improvements assessed and paid for in installments under
25 statutory or charter authority [*or*].

26 **(b)** To finance capital construction or capital improvements **permitted by Article XI, sections**
27 **11 and 11b, of the Oregon Constitution, or to finance capital costs permitted by Article XI,**
28 **section 11L, of the Oregon Constitution, for:**

29 [(a)] **(A)** Water supply, treatment or distribution;

30 [(b)] **(B)** Sanitary or storm sewage collection or treatment;

31 [(c)] **(C)** Hospitals or infirmaries;

32 [(d)] **(D)** Gas, power or lighting; or

33 [(e)] **(E)** Off-street motor vehicle parking facilities.

34 **SECTION 4.** ORS 287A.100 is amended to read:

35 287A.100. [(1) *Unless the county charter expressly provides otherwise, a county may issue general*
36 *obligation bonds to finance capital construction or capital improvements upon approval of the electors*
37 *of the county.*]

38 **(1) Unless the county charter expressly provides otherwise, upon approval of the electors**
39 **of a county, the county may issue general obligation bonds to finance:**

40 **(a) Capital construction or capital improvements permitted by Article XI, sections 11 and**
41 **11b, of the Oregon Constitution.**

42 **(b) Capital costs permitted by Article XI, section 11L, of the Oregon Constitution.**

43 (2) Unless the county charter provides a lesser limitation, a county may not issue or have out-
44 standing at the time of issuance general obligation bonds in a principal amount that exceeds two
45 percent of the real market value of the taxable property in the county, calculated as provided in

1 ORS 308.207.

2 **SECTION 5.** ORS 287A.145 is amended to read:

3 287A.145. (1) If a court of competent jurisdiction determines that the proceeds of an issue of
4 general obligation bonds have been used by a public body for expenditures that are not **capital**
5 **costs permitted by Article XI, section 11L, of the Oregon Constitution, or that are not costs**
6 **of capital construction or capital improvements permitted by Article XI, sections 11 and 11b, of**
7 **the Oregon Constitution**, the court may order the public body to:

8 (a) Replace the misspent proceeds with interest, on a reasonable schedule determined by the
9 court, from moneys other than the tax revenues that the public body levies to pay the debt service;
10 and

11 (b) Use the replaced moneys [*for*], **as appropriate, for capital costs, for the costs of capital**
12 **construction or capital improvements** [*improvement expenditures*] or to pay the debt service.

13 (2) If the public body fails to comply with an order to replace the misspent proceeds or ac-
14 knowledges that the public body is unable to replace the misspent proceeds, the court may deter-
15 mine that a portion of the future levies to pay the debt service is subject to the limits of [*sections*
16 *11 and 11b,*] Article XI, **sections 11 and 11b**, of the Oregon Constitution, by calculating the amount
17 of the tax revenues that are necessary to pay the principal and interest on the bonds that is
18 allocable to the misspent proceeds.

19 (3) An action may not be filed or maintained against a public body because of an alleged ex-
20 penditure of the bond proceeds of general obligation bonds for purposes other than **capital costs**,
21 capital construction or capital improvements, if the misspent moneys are less than \$5,000.

22 **SECTION 6.** ORS 198.810 is amended to read:

23 198.810. (1) The county board shall approve, modify or reject a petition for formation using only
24 the criteria set forth in ORS 198.805.

25 (2) If the county board approves the petition for formation, as presented or as modified, or if the
26 boundary commission considers the petition for formation pursuant to ORS 198.800 (1)(a), approves
27 the petition, as presented or as modified, and transmits its approval to the county board in accord-
28 ance with ORS 199.480, the county board shall enter an order so declaring. The order shall set forth
29 the name of the district and the boundaries as determined by the board or by the boundary com-
30 mission. The order shall also fix a place, and a time not less than 20 nor more than 50 days after
31 the date of the order, for a final hearing on the petition. The order shall declare that if written re-
32 quests for an election are not filed as provided by subsection (3) of this section, the board, at the
33 time of the final hearing, will enter its order creating the district. The board shall cause notice of
34 the hearing to be given by publication.

35 (3) An election may not be held unless written requests for an election are filed at or before the
36 hearing by not less than 15 percent of the electors or 100 electors, whichever is the lesser number,
37 registered in the proposed district.

38 (4) Notwithstanding subsections (2) and (3) of this section, if the petition for formation includes:

39 (a) A permanent rate limit for operating taxes for the proposed district and the petition is ap-
40 proved by the county board or boundary commission, as presented or as modified, the county shall
41 hold an election on the question of forming the district.

42 (b) In addition to the permanent rate limit for operating taxes, a separate ad valorem tax for
43 bonded indebtedness for capital construction, **capital improvement or capital costs, as those**
44 **terms are defined in ORS 310.140**, within the proposed district and the petition is approved by the
45 county board, as presented or as modified, the county shall hold an election on the question of in-

1 curring the bonded indebtedness when the election on the question of formation of the district is
 2 held. The question on incurring bonded indebtedness may be approved only if electors approve for-
 3 mation of the district, and the ballot measure must clearly state that the bonded indebtedness may
 4 be approved only if electors approve formation of the district.

5 (5) Notwithstanding subsection (3) of this section and ORS 198.815, an order of a boundary
 6 commission authorizing a county service district established to provide sewage works to also pro-
 7 vide drainage works shall be effective upon the filing of the order with the county board. The order
 8 of the boundary commission is subject to referendum by the electors of the county service district
 9 in the manner provided for district measures under ORS 255.135 to 255.205. If the order of a
 10 boundary commission is referred to the electors, the order does not take effect until the order is
 11 approved by a majority of the votes cast on the question and the results of the election are certified.
 12 The question in the ballot title for a measure referred under this subsection shall be worded so that
 13 an affirmative response to the question corresponds to a vote in favor of authorizing the county
 14 service district to provide drainage works.

15 **SECTION 7.** ORS 305.586 is amended to read:

16 305.586. (1) **As used in this section:**

17 (a) **“Capital construction” has the meaning given that term in ORS 310.140.**

18 (b) **“Capital costs” has the meaning given that term in ORS 310.140.**

19 (c) **“Capital improvements” has the meaning given that term in ORS 310.140.**

20 [(1)] (2) The Legislative Assembly finds that, when general obligation bonds are issued by a
 21 government unit to finance **capital costs or to finance** the [cost] **costs** of capital construction or
 22 **capital** improvements, subjecting the taxes imposed to pay the principal and interest on that bonded
 23 indebtedness to the limits of [section 11b (1),] Article XI, **section 11b (1)**, of the Oregon Constitution,
 24 reduces the credit quality of the bonds, injures bondholders and increases the cost of borrowing for
 25 all local governments in Oregon. The Legislative Assembly also finds that it is in the best interests
 26 of the State of Oregon and local governments in Oregon to ensure that, if a local government body
 27 expends proceeds from [such] **the** bonds for other than **capital costs**, capital construction or **capital**
 28 improvements, **whichever is an authorized use of proceeds of the bonds**, the holders of the
 29 bonds, who are innocent with regard to [such] **the** expenditure, will not suffer impairment of their
 30 security and interest in the bonds as a result.

31 [(2)] (3) It is the policy of the State of Oregon and a matter of statewide concern that,
 32 notwithstanding ORS 305.587 (1) and 305.589 (8), if in a proceeding commenced under ORS 305.583
 33 or 305.589, the Oregon Tax Court finds that the proceeds of general obligation bonds issued for
 34 capital construction or **capital** improvements [under section 11b (3)(b), Article XI of the Oregon
 35 Constitution,] **as defined in Article XI, section 11 (13), of the Oregon Constitution, or general**
 36 **obligation bonds issued for capital costs, as defined in Article XI, section 11L, of the Oregon**
 37 **Constitution**, have been expended for purposes other than **capital costs or the costs of** capital
 38 construction or **capital** improvements, the court shall endeavor, to the fullest extent practicable and
 39 consistent with equitable principles, to fashion a remedy that does not impair the security or value
 40 of the bonds to the bondholders and does not prejudice the ability of the local government body to
 41 satisfy its obligations under the bonds.

42 [(3)] (4) In addition, the court shall fashion any remedy in a manner that takes into account the
 43 financial capacity and practical alternatives available to the local government body, and shall en-
 44 sure that the remedy is proportional to, and restricted to correcting the amount of, any unlawful
 45 expenditure of bond proceeds. To the fullest extent possible, the court shall avoid any remedy that

1 either invalidates, in whole or in part, the bonds or taxes levied or to be levied for payment of the
2 bonds, or that makes any amount of the bonds for which the proceeds lawfully were expended sub-
3 ject to the limits of [section 11b (1),] Article XI, **section 11b (1)**, of the Oregon Constitution.

4 **SECTION 8. This 2013 Act being necessary for the immediate preservation of the public**
5 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
6 **July 1, 2013.**

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