

House Bill 2851

Sponsored by Representative WHISNANT

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**.

Requires public body to obtain voter approval before incurring indebtedness for which public body pledges full faith and credit and taxing power to secure repayment.

Limits authority of school districts to issue revenue bonds.

Specifies bonds of school district for which State Treasurer may issue certificate of qualification for state guaranty.

A BILL FOR AN ACT

1
2 Relating to public borrowing; creating new provisions; amending ORS 271.390, 287A.150, 287A.315,
3 328.230, 328.321 and 353.340; and repealing ORS 328.295.

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

5 **SECTION 1.** ORS 287A.315 is amended to read:

6 287A.315. (1) **Subject to subsection (6) of this section**, a public body may pledge its full faith
7 and credit and taxing power when the public body issues:

8 (a) A general obligation bond; or

9 (b) An obligation that is secured by all lawfully available funds of the public body.

10 (2) When a public body pledges its full faith and credit and taxing power to pay an obligation,
11 the pledge constitutes an enforceable promise or contract by the public body:

12 (a) To pay the obligation out of lawfully available funds of the public body; and

13 (b) If lawfully available funds are insufficient to pay when due the amounts owing on the obli-
14 gation, to levy, impose and collect a tax that is within the authority of the public body to levy, im-
15 pose and collect in an amount sufficient to pay the amounts owing under the obligation, including
16 past due amounts and penalties.

17 (3) If a public body fails to pay when due an amount owing under an obligation secured by a
18 pledge of the full faith and credit and taxing power of the public body, the owner of the obligation,
19 or the trustee appointed to act on behalf of the owner, may bring an action in the circuit court of
20 the county in which the principal offices of the public body are located to compel the public body:

21 (a) To appropriate and expend sufficient lawfully available funds to pay the amounts owing on
22 the obligation; or

23 (b) If lawfully available funds are insufficient to pay when due the amounts owing on the obli-
24 gation, to levy, impose and collect a tax that is within the authority of the public body to levy, im-
25 pose and collect in an amount sufficient to pay the amounts owing under the obligation, including
26 past due amounts and penalties.

27 (4) An owner of the obligation, or a trustee appointed to act on behalf of the owner, may initiate
28 a proceeding to impose remedial sanctions under ORS 33.055 against members of the governing body
29 of a public body for failure to comply with an order of the court under this section.

30 (5) **Notwithstanding ORS 287A.310 (4)**, a pledge of the full faith and credit and taxing power

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 authorized by this section does not, by itself, create a lien on the revenues or property of the public
 2 body.

3 **(6) A public body may pledge the full faith and credit and taxing power of the public body**
 4 **under this section only after the electors of the public body approve the issuance of an obli-**
 5 **gation described in subsection (1) of this section.**

6 **SECTION 2.** ORS 271.390 is amended to read:

7 271.390. (1) As used in this section:

8 (a) "Council of governments" means a council of governments or other similar entity created
 9 prior to the enactment of ORS 190.010 (5) on September 29, 1991.

10 (b) "Public body" has the meaning given that term in ORS 287A.001.

11 (c) "Real or personal property" means land, improvements to land, structures, fixtures, personal
 12 property, including furnishings, equipment and computer software purchases and licenses, and any
 13 costs that may be capitalized under generally accepted accounting principles and treated as costs
 14 of personal property.

15 (2) A public body or a council of governments may enter into contracts for the leasing, rental
 16 or financing of any real or personal property that the governing body of the public body or council
 17 of governments determines is needed, including contracts for rental, long term leases under an op-
 18 tional contract for purchase, financing agreements with vendors, financial institutions or others, or
 19 for purchase of any property. Contracts made by a public body or a council of governments are
 20 subject to the terms of its charter, intergovernmental agreement or other organizing document, if
 21 applicable. If authorized by the governing body, the contracts may:

22 (a) Provide that the obligations of the public body or council of governments under the contract
 23 is secured by a mortgage on or other security interest in the property to be leased, rented, pur-
 24 chased or financed under the contract.

25 (b) Provide that the obligations of the public body or council of governments under the contract
 26 are payable out of all or any portion of lawfully available funds of the public body or council of
 27 governments[, *and*] **and, subject to subsection (4) of this section**, lawfully available funds may
 28 be pledged to the payment of those obligations.

29 (c) If authorized by the charter, intergovernmental agreement or other organizing document of
 30 the public body or council of governments, contain a covenant on the part of the public body or
 31 council of governments to budget and appropriate in each fiscal year, in accordance with law, sums
 32 sufficient to pay when due the amounts owing under the contract.

33 (d) Provide for the issuance of certificates of participation in the payment obligations of the
 34 public body or council of governments under the contract and contain other covenants, agreements
 35 and provisions determined to be necessary or appropriate in order to better secure the obligations
 36 of the public body or council of governments.

37 (3) The lien of the pledge, mortgage or security interest is valid and binding from the time of
 38 entering into the contract. The revenue or property is immediately subject to the lien without
 39 physical delivery, filing or other act, and the lien is superior to all other claims and liens of any
 40 kind whatsoever. Subject to the terms, provisions and limitations of the contract, the lien may be
 41 foreclosed by a proceeding brought in the circuit court of the county in which the public body, or
 42 the greater part thereof, or the main office of the council of governments is located, and any tan-
 43 gible real or personal property subject to the lien may be sold upon the order of the court. The
 44 proceeds of the sale must be applied first to the payment of the costs of foreclosure and then to the
 45 amounts owing under the contract, with any balance being paid to the public body or council of

1 governments. The authority granted by this section is in addition to, and not in lieu of, any other
 2 statutory or charter authority.

3 **(4) When a public body or a council of governments is authorized by its charter, inter-**
 4 **governmental agreement or other organizing document to pledge its full faith and credit and**
 5 **taxing power, the public body or council of governments may pledge its full faith and credit**
 6 **and taxing power pursuant to ORS 287A.310 and 287A.315 if the public body or council of**
 7 **governments pledges all lawfully available funds under this section.**

8 [(4)] (5) A public body or council of governments that has entered into a lease purchase or in-
 9 stallment purchase agreement may enter into a financing agreement to refinance the obligations of
 10 the public body or council of governments under the lease purchase or installment purchase agree-
 11 ment.

12 [(5)] (6) The estimated weighted average life of a financing contract executed under this section
 13 may not exceed the estimated dollar weighted average life of the real or personal property that is
 14 financed with the contract.

15 **SECTION 3.** ORS 287A.150 is amended to read:

16 287A.150. (1) In addition to any other authority to issue revenue bonds, a public body may au-
 17 thorize revenue bonds by resolution or nonemergency ordinance pursuant to this section for a public
 18 purpose.

19 (2) If revenue bonds are authorized by nonemergency ordinance, a public body may not sell the
 20 revenue bonds pursuant to this section until the period for referral of the ordinance has expired. If
 21 electors of a public body refer a nonemergency ordinance authorizing issuance of revenue bonds, the
 22 public body may not sell the revenue bonds unless the electors approve issuance of the revenue
 23 bonds.

24 (3) If revenue bonds are authorized by resolution:

25 (a) A public body may not sell the revenue bonds until at least 60 days following publication
 26 of the notice required in subsection (4) of this section.

27 (b) The resolution must provide that electors residing within the public body may file a petition
 28 with the public body asking the public body to refer the question of whether to issue the revenue
 29 bonds to a vote. If within 60 days after the publication of the notice described in subsection (4) of
 30 this section, electors file petitions with the public body containing valid signatures of at least five
 31 percent of the public body's electors, the public body:

32 (A) Shall place the question of issuing the revenue bonds on the ballot at the next lawfully
 33 available election date; and

34 (B) May not sell the revenue bonds described in the notice unless a majority of the electors
 35 voting on the question of issuing the revenue bonds approve.

36 (4) A public body authorizing revenue bonds by resolution shall publish a notice describing the
 37 purposes for which the revenue bonds will be sold in at least one newspaper of general circulation
 38 within the boundaries of the public body in the same manner as other public notices of the public
 39 body. At a minimum, the notice must contain:

40 (a) The date the resolution was adopted and the number thereof, if any;

41 (b) The expected source of revenue for repayment of the revenue bonds;

42 (c) The estimated principal amount of the revenue bonds to be sold;

43 (d) The procedures by which electors may cause the question of issuing the revenue bonds to
 44 be referred to a vote;

45 (e) The period within which electors must file signed petitions to cause referral; and

1 (f) The fact that the resolution is available for inspection at the appropriate office of the public
2 body.

3 (5) If revenue bonds are authorized by nonemergency ordinance under subsection (2) of this
4 section, the revenue bonds may be secured by the revenues or other property of the public body that
5 is described in the nonemergency ordinance. If revenue bonds are authorized by resolution under
6 subsection (3) of this section, the revenue bonds may be secured by the revenues or other property
7 of the public body that is described in the notice required under subsection (4) of this section.

8 (6) A public body may issue refunding bonds under ORS 287A.360 to 287A.380 to pay revenue
9 bonds that were authorized by this section. The procedures and limitations of subsections (1) to (5)
10 of this section do not apply to refunding bonds.

11 **(7) This section does not apply to a school district, as defined in ORS 328.321.**

12 **SECTION 4. Section 5 of this 2015 Act is added to and made a part of ORS 328.205 to**
13 **328.304.**

14 **SECTION 5. As used in ORS 328.205 to 328.304, “bond” means a bond issued by a common**
15 **or union high school district under ORS 328.205 to 328.304.**

16 **SECTION 6.** ORS 328.230 is amended to read:

17 328.230. If the electors of the **school** district approve the contracting of bonded indebtedness,
18 [*the bonds shall be issued as prescribed in ORS chapter 287A*] **the school district shall issue bonds**
19 **under ORS 328.205 to 328.304 as prescribed in ORS 287A.300 to 287A.380.**

20 **SECTION 7.** ORS 328.321 is amended to read:

21 328.321. As used in ORS 328.321 to 328.356:

22 (1) “Common School Fund” means the state school fund described in section 2, Article VIII,
23 Oregon Constitution.

24 (2) “General obligation bond” has the meaning given that term in ORS 287A.001.

25 (3) “Paying agent” means the corporate paying agent selected by the school district board for
26 a school bond issue who is:

27 (a) Duly qualified; and

28 (b) Acceptable to the State Treasurer.

29 (4) “School bond” means [*any general obligation bond issued*] **an obligation to repay borrowed**
30 **moneys that is incurred by a school district and for which the school district pledges its full**
31 **faith and credit and taxing power under ORS 287A.315.**

32 (5) “School district” means a common or union high school district, an education service district
33 or a community college district.

34 (6) “State bonds” means those general obligation bonds issued by the State of Oregon to meet
35 its obligations under the state guaranty as described in ORS 328.351.

36 (7) “State guaranty” means the pledge of the full faith and credit and taxing power of the State
37 of Oregon to guarantee payment of eligible school bonds as set forth in ORS 328.321 to 328.356.

38 **SECTION 8.** ORS 353.340 is amended to read:

39 353.340. [*Oregon Health and Science University may from time to time issue and sell revenue bonds*
40 *in accordance with ORS chapter 287A. However, the provisions contained in ORS 287A.150 (2) to (6)*
41 *do not apply to revenue bonds issued by the university. Such revenue bonds shall not in any manner*
42 *nor to any extent be a general obligation of the university nor a charge upon any revenues or property*
43 *of the university not specifically pledged thereto. An obligation described in this section is not an*
44 *indebtedness of the State of Oregon.*]

45 **(1) Oregon Health and Science University may from time to time issue and sell revenue**

1 **bonds in the manner described in ORS 287A.300 to 287A.380.**

2 **(2) ORS 287A.150 does not apply to revenue bonds issued under this section.**

3 **(3) Revenue bonds issued under this section are not a general obligation of the university**
4 **nor a charge upon any revenues or property of the university not specifically pledged to se-**
5 **cure.**

6 **(4) An obligation described in this section is not an indebtedness of the State of Oregon.**

7 **SECTION 9. ORS 328.295 is repealed.**

8
