



April 19, 2019, 12:00 p.m., HR E

Ways and Means Subcommittee on Capital Construction

RE: HB 5030 – Funding for the Coos Bay Channel Modification Project

Dear Members of the Subcommittee on Capital Construction,

I am writing to urge your support for full funding of the final \$40 million allocation of Lottery Backed Bonds designated in Chapter 815 of 2015 Oregon Law and amending HB 2278-B to remove restrictions on the \$15 million allocation previously dedicated in the 2017-2019 biennium for the Coos Bay Channel Modification Project.

Originally passed in 2006, the Oregon State Legislature saw this project as transformative for the economy of the South Coast and as being of statewide significance. Oregon needs greater capacity and options for importing and exporting goods and commodities.

The Oregon International Port of Coos Bay (Port) is greatly appreciative of the support that the legislature has provided to this project. Support for the project remains strong, illustrated by the passage of the full \$15 million allocation in the 2017-2019 biennium.

Full funding of the final \$40 million-dollar allocation to support construction in this biennium is imperative. This allocation is scheduled for the 2019 biennium and is of critical importance to the success of the project. The State of Oregon committed its support for this project, in statute. These funds are necessary to fund the deepening and widening of the channel to support existing and future maritime commerce in Oregon. Partially funding the project in this biennium with the intent to fully fund in a future biennium is not an option due to the project schedule. Even if \$20 million were allocated in this session and an additional \$20 million allocated in the 2021-2022 biennium, funds from bond sales would not be available until 2023, by which time construction on the Channel Modification project will have nearly concluded.

HB 2278-B was passed in the 2015 Legislative Assembly, amending language related to the issuance of the \$60 million in State Lottery Backed Bonds. Distribution of these funds was intended for distribution in 3 distinct allocations of \$5 million and \$15 million for engineering and design work, and \$40 million to support construction. The Port is requesting an amendment to HB 2278-B to remove certain requirements restricting access to previously allocated funds intended for engineering. The \$15 million allocation approved in the 2017-2019 biennium cannot be released until completion of the final Environmental Impact Statement (EIS). These funds will be necessary to complete engineering and design work that will inform work necessary to complete the EIS. It is anticipated that \$5 million of the \$15 million allocation will be needed in the first quarter of 2020, and the remaining \$10 million required in the 3rd quarter of 2020. The final EIS is scheduled for completion in last quarter of 2020.

The funds pledged by the State will serve to expand the existing channel from -37' depth and 300' width to -45' depth and 450' width from the channel entrance to river mile 8.2. The channel modification project is instrumental in facilitating future economic development in Oregon and is necessary to accommodate the growing global fleet

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This project is critical to the long-term success and viability of Oregon's transportation network, the economic health of southwestern Oregon.

Sincerely,

John Burns, CEO
Oregon International Port of Coos Bay

Attachments:

Channel Modification Fact Sheet
HB 2278-B

B-Engrossed House Bill 2278

Ordered by the House July 6
Including House Amendments dated April 8 and July 6

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Transportation and Economic Development)

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.

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, 12, 13 and 14,
3 chapter 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
8 of an exceptional, inevitable and irresistible character, the effects of which could not have been
9 prevented or avoided by the exercise of due care or foresight.

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

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

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

19 **SECTION 2.** Section 12, chapter 746, Oregon Laws 2007, is amended to read:

20 **Sec. 12.** The Legislative Assembly finds that:

21 (1)(a) The Coos Bay Channel Project will create jobs and further economic development in
22 Oregon because deepening and widening the lower Coos Bay deep draft navigation channel, west
23 of the Coos Bay railroad bridge, will allow the Oregon International Port of Coos Bay to accom-
24 modate new generations of deep draft cargo vessels and to diversify the types of cargo that can be
25 processed through the port, increasing maritime and international trade throughout Oregon, im-
26 proving the attractiveness of Oregon to new businesses and supporting the operations and prosperity
27 of existing businesses.

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 *[(b) Authorization for the issuance of lottery bonds will increase the likelihood of federal funding*
2 *for the project, encourage the development of public and private sector partnerships to continue the*
3 *modernization and expansion of the Oregon International Port of Coos Bay, including the development*
4 *and construction of an intermodal container terminal for Coos Bay harbor, and add new income that*
5 *will directly benefit Oregon's dredging, construction or maritime industries.]*

6 **(b) Authorization for the issuance of lottery bonds will increase the likelihood of federal**
7 **funding for maintenance of the project, encourage the development of public and private**
8 **sector partnerships to continue the modernization and expansion of the Oregon International**
9 **Port of Coos Bay, including the development and construction of modern multipurpose,**
10 **multimodal terminal facilities for the Coos Bay harbor, and add new income that will directly**
11 **benefit Oregon's dredging, construction or maritime industries.**

12 (2) The factors described in subsection (1) of this section will encourage and promote economic
13 development within the state, and the issuance of lottery bonds to finance the Coos Bay Channel
14 Project is therefore an appropriate use of state lottery funds to pay the amounts specified in section
15 13 *[of this 2007 Act]*, **chapter 746, Oregon Laws 2007**, under *[section 4,]* Article XV, **section 4**, of
16 the Oregon Constitution, and under ORS 461.510. Neither the faith and credit nor any of the taxing
17 power of the state is pledged or otherwise committed by sections 11 to 15 *[of this 2007 Act]*, **chapter**
18 **746, Oregon Laws 2007**, and the commitments of the state under sections 11 to 15 *[of this 2007*
19 *Act]*, **chapter 746, Oregon Laws 2007**, and ORS 777.277 to 777.287 do not constitute a debt or li-
20 ability of the state within the meaning of *[section 7,]* Article XI, **section 7**, of the Oregon Constitu-
21 tion.

22 **SECTION 3.** Section 13, chapter 746, Oregon Laws 2007, as amended by section 1, chapter 900,
23 Oregon Laws 2009, and section 1, chapter 754, Oregon Laws 2013, is amended to read:

24 **Sec. 13.** (1) In addition to amounts authorized under ORS 286.505 to 286.545 (2005 Edition) or
25 pursuant to ORS 286A.035, the State Treasurer, at the request of the Director of the Oregon Busi-
26 ness Development Department, may issue lottery bonds pursuant to ORS 286A.560 to 286A.585:

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

29 (b) In an additional amount to be estimated by the State Treasurer for payment of bond-related
30 costs of the Oregon Department of Administrative Services, the Oregon Business Development De-
31 partment and the State Treasurer.

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

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

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

45 *[(c) In the biennium beginning July 1, 2017, up to \$40 million in net proceeds of lottery bonds to*

1 *the Coos Bay Channel Fund established in section 15, chapter 746, Oregon Laws 2007, for distribution*
2 *to the primary sponsor after the director finds that the primary sponsor has taken action pursuant to*
3 *the grant agreement required in section 14, chapter 746, Oregon Laws 2007, that triggers the distrib-*
4 *ution of bond proceeds described in this paragraph.]*

5 **(b) In the biennium beginning July 1, 2017, up to \$15 million in net proceeds of lottery**
6 **bonds, minus any other state funds secured by the primary sponsor in the interim period**
7 **2015 to 2016, to the Coos Bay Channel Fund established in section 15, chapter 746, Oregon**
8 **Laws 2007, for distribution to the primary sponsor after the director finds that the primary**
9 **sponsor has taken action pursuant to the grant agreement required in section 14, chapter**
10 **746, Oregon Laws 2007, that triggers the distribution of bond proceeds described in this par-**
11 **agraph.**

12 **(c) In the biennium beginning July 1, 2019, up to \$40 million in net proceeds of lottery**
13 **bonds to the Coos Bay Channel Fund established in section 15, chapter 746, Oregon Laws**
14 **2007, for distribution to the primary sponsor after the director finds that the primary spon-**
15 **sor has taken action pursuant to the grant agreement required in section 14, chapter 746,**
16 **Oregon Laws 2007, that triggers the distribution of bond proceeds described in this para-**
17 **graph.**

18 **SECTION 4.** Section 14, chapter 746, Oregon Laws 2007, as amended by section 2, chapter 900,
19 Oregon Laws 2009, and section 2, chapter 754, Oregon Laws 2013, is amended to read:

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

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

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

33 [(b) Require the primary sponsor to:]

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

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

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

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

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

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

8 *[(A) The primary sponsor has entered into a commercially reasonable agreement with a cargo ter-*
9 *минаl developer to construct and operate cargo terminal facilities on the Coos Bay channel;]*

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

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

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

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

20 *[(B) The primary sponsor has obtained, or has reasonable assurance of obtaining, adequate fund-*
21 *ing to complete permitting and engineering work on the Coos Bay Channel Project.]*

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

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

28 *[(B) The primary sponsor has obtained, or has reasonable assurance of obtaining, adequate fund-*
29 *ing to complete the Coos Bay Channel Project.]*

30 **(3)(a) Prior to the distribution of the bond proceeds described in section 13 (2)(b), chapter**
31 **746, Oregon Laws 2007, the primary sponsor shall provide to the director a budget document**
32 **outlining expenditures for the Coos Bay Channel Project and shall:**

33 **(A) Verify and certify to the director that the primary sponsor has prepared and sub-**
34 **mitted to the United States Army Corps of Engineers the tentatively selected plan report**
35 **identifying the preferred alternative for the project.**

36 **(B) Verify and certify to the director that:**

37 **(i) The final environmental impact statement and the draft record of decision have been**
38 **issued in accordance with the National Environmental Policy Act (42 U.S.C. 4321 et seq.); and**

39 **(ii) The Oregon International Port of Coos Bay has prepared and submitted to the United**
40 **States Army Corps of Engineers a draft combined report pursuant to section 204 of the**
41 **Water Resources Development Act of 1986 (P.L. 99-662) and section 14 of the Rivers and**
42 **Harbors Appropriation Act of 1899 (33 U.S.C. 408) for technical agency review.**

43 **(b) Prior to the distribution of the bond proceeds described in section 13 (2)(c), chapter**
44 **746, Oregon Laws 2007, the primary sponsor shall provide to the director a budget document**
45 **outlining expenditures for the Coos Bay Channel Project and verify and certify to the direc-**

1 tor that:

2 (A) The Director of Civil Works for the United States Army Corps of Engineers has ap-
3 proved the project pursuant to section 14 of the Rivers and Harbors Appropriation Act of
4 1899;

5 (B) The United States Army Corps of Engineers Portland District has issued permits for
6 construction pursuant to section 404 of the Federal Water Pollution Control Act (P.L.
7 92-500), as amended, and section 10 of the Rivers and Harbors Appropriation Act of 1899; and

8 (C) The Assistant Secretary of the Army (Civil Works) for the United States Army Corps
9 of Engineers has approved and executed an agreement pursuant to section 204(f) of the Wa-
10 ter Resources Development Act of 1986.

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

14 [(6)] (5) By receipt of any part of net proceeds of lottery bonds described in section 13, chapter
15 746, Oregon Laws 2007, the primary sponsor agrees to indemnify the state and its agencies and de-
16 partments to the fullest extent permitted by law for liability the state or its agencies and depart-
17 ments might incur in connection with any borrowing by the primary sponsor for the project.

18 [(7)] (6) The director and the primary sponsor shall modify the existing grant agreement as may
19 be necessary to incorporate the amendments to this section and section 13, chapter 746, Oregon
20 Laws 2007, by sections 1 and 2 [*of this 2013 Act*], **chapter 754, Oregon Laws 2013.**

21 **SECTION 5. This 2015 Act being necessary for the immediate preservation of the public**
22 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
23 **on its passage.**

24