

Enrolled Senate Bill 20

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CHAPTER

AN ACT

Relating to public borrowing; amending ORS 287A.300, 287A.360, 287A.365, 305.583 and 441.555.

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

SECTION 1. ORS 287A.360 is amended to read:

287A.360. (1) In addition to any other authority to issue refunding bonds, a public body may issue current refunding bonds to refund **or purchase** its outstanding bonds [*pursuant to this section*].

(2) A public body may secure current refunding bonds with any of the revenues and covenants that the public body could have used to secure the refunded **or purchased** bonds **under the law in effect when the refunded or purchased bonds were issued** and with revenues and covenants [*authorized by law when the refunding bonds are issued.*] **that the public body could have used to secure the refunded or purchased bonds if the laws that are in effect when the current refunding bonds are issued were in effect when the refunded or purchased bonds were issued.**

(3) A public body may [*issue*] **authorize current refunding bonds by resolution or ordinance without complying with the procedural requirements that applied to the refunded or purchased bonds, including issuing:**

(a) General obligation bonds to refund **or purchase** outstanding general obligation bonds without obtaining approval of the electors of the public body.

(b) Revenue bonds to refund **or purchase** revenue bonds that were issued in accordance with ORS 287A.150 without complying with the procedures prescribed in ORS 287A.150.

(4) The maturities of current refunding bonds authorized by this section may not exceed by more than six months:

(a) **Maturity limits that were established by the electors for the refunded or purchased bonds; and**

(b) **A maturity limit imposed by a provision of a constitution, charter or statute that applied to the refunded or purchased bonds, if the provision imposing the limit is in effect when the current refunding bonds are issued.**

SECTION 2. ORS 287A.365 is amended to read:

287A.365. (1) The Legislative Assembly declares that the issuance of advance refunding bonds and the authority to effect a forward current refunding are matters of general statewide concern, and ORS 287A.360 to 287A.380 preempt all local statutory or charter authority to issue advance refunding bonds or to effect a forward current refunding.

(2) A public body may issue advance refunding bonds or enter into forward current refundings in compliance with:

- (a) ORS 287A.360 to 287A.380; and
- (b) Rules adopted by the State Treasurer.

(3) A public body may secure advance refunding bonds **and forward current refunding bonds** with any of the revenues and covenants that the public body could have used to secure the refunded bonds **under the law in effect when the refunded bonds were issued** and with revenues and covenants [*authorized by law when the refunding bonds are issued.*] **that the public body could have used to secure the refunded bonds if the laws that are in effect when the refunding bonds are issued were in effect when the refunded bonds were issued.**

(4) **The maturities of advance refunding bonds and forward current refunding bonds authorized by this section may not exceed by more than six months:**

(a) **Maturity limits that were established by the electors for the refunded bonds; and**

(b) **A maturity limit imposed by a provision of a constitution, charter or statute that applied to the refunded bonds, if the provision imposing the limit is in effect when the refunding bonds are issued.**

SECTION 2a. ORS 287A.300 is amended to read:

287A.300. (1) Notwithstanding [*a limitation in*] a local charter **or statutory limitation**, when a public body is authorized by law to issue bonds, the public body may:

(a) Combine bonds authorized by different laws or actions of the governing body into a single issue and use a single disclosure document if the bonds in the issue will have the same security, or may use a single disclosure document for bonds authorized by different laws or actions of the governing body if the bonds have different security.

(b) Structure, market and issue bonds in the manner that the public body determines is in the best interest of the people served by the public body.

(c) Sell bonds at a competitive sale or a negotiated sale or in any other manner determined by the public body.

(d) Issue bonds the interest on which is exempt from federal income taxes or is not exempt from federal income taxes.

(e) Establish the maturity dates for bonds to provide for short-term, interim or long-term borrowing and establish the principal amounts, redemption provisions, optional or mandatory tender provisions, interest rates or method for determining a variable or adjustable interest rate, denominations and other terms and conditions of the bonds.

(f) Determine the form and content of bond disclosure documents.

(g) Enter into an agreement with and retain the services of bond counsel and other providers of bond-related services.

(h) Execute and deliver indentures, bond purchase agreements, trust agreements, remarketing agreements, auction agent agreements, broker dealer agreements, tender agent agreements, escrow agreements and other contracts related to the sale, issuance, security for or administration of the bonds.

(i) Enter into agreements with bond trustees and deposit moneys with trustees for the benefit of bond owners and the providers of credit enhancement devices for bonds.

(j) Enter into covenants for the benefit of bond owners or the providers of credit enhancement devices or agreements for exchange of interest rates, including but not limited to covenants regarding the issuance of additional bonds and rate covenants.

(k) Enter into covenants for the benefit of owners of bonds that are intended to allow bonds to bear interest that is excludable from gross income under the federal Internal Revenue Code or that is otherwise exempt from taxation by the United States.

(L) Take action to comply with covenants.

(m) Establish bond debt service reserves.

(n) Fund debt service reserves out of bond proceeds or from other revenues.

(o) Specify the individuals who may sign the bonds on behalf of the public body.

(2) When the Oregon Constitution, a charter, a statute, an ordinance or a resolution authorizes a public body to spend bond proceeds for a particular purpose, the public body may also spend bond proceeds to finance costs of issuing, administering and repaying the bonds, including costs of the services of bond counsel or other providers of bond-related services, and to pay the costs of a credit enhancement device or agreement for exchange of interest rates.

(3) When a public body redeems bonds, the public body shall give notice of redemption in the manner specified in the documents authorizing the bonds to be redeemed.

(4) A public body may delegate to an elected or appointed official or an employee of the public body the authority to take an action described in subsection (1) of this section.

(5) Except as provided otherwise in this subsection, at least one of the signatures of bond signatories must be provided in manual form. However, if the bonds are to be authenticated by at least one signature in manual form, all signatures of bond signatories may be in facsimile form.

SECTION 3. ORS 305.583 is amended to read:

305.583. (1) An interested taxpayer may petition the regular division of the Oregon Tax Court to determine a question described in ORS 305.580.

(2)(a) For purposes of this section and a question described in ORS 305.580 (1)(a), “interested taxpayer” means a person that is subject to the tax, fee, charge or assessment in question.

(b) For purposes of this section and a question described in ORS 305.580 (1)(b), “interested taxpayer” means a person that is subject to a tax, fee, charge or assessment that is pledged to secure or available for payment of bonded indebtedness described in section 11 (11)(d), Article XI of the Oregon Constitution.

(3) The petition shall be filed and perfected in the following manner only:

(a) The petitioner shall file a petition with the clerk of the tax court at its principal office in Salem, Oregon. The petition shall name as respondent the government unit that imposes the tax, fee, charge or assessment, that issues the bonded indebtedness or, in the case of an urban renewal agency, that receives the taxes. The filing in the tax court shall constitute the perfection of the petition. The clerk of the tax court shall serve the government unit by mailing a copy of the petition to the recording officer or chief administrative officer of the local government unit or to the Attorney General if the tax, fee, charge or assessment in question is imposed by the State of Oregon. The clerk also shall serve a copy of any petition naming a local government unit as respondent upon the Oregon Department of Justice.

(b) The petition shall state the facts and grounds upon which the petitioner contends that the tax, fee, charge or assessment is affected by section 11 or 11b, Article XI of the Oregon Constitution, or that a use of the proceeds of bonded indebtedness is not authorized. The case shall proceed thereafter in the manner provided for appeals concerning ad valorem property tax assessments. ORS 305.405 to 305.494 shall apply to such actions.

(4)(a) Except as provided in subsections (5) to (8) of this section, in the case of a question regarding the effect of the limits of section 11b, Article XI of the Oregon Constitution, on any tax, fee, charge or assessment that is imposed under a resolution or ordinance approved by the governing body of a local government unit, the petition shall be filed within 60 days after the action of the governing body approving the ordinance or resolution, adopting a new ordinance or resolution or changing an existing ordinance or resolution under which the tax, fee, charge or assessment is imposed, if the resolution or ordinance includes a classification of the tax, fee, charge or assessment as subject to or not subject to section 11 or 11b, Article XI of the Oregon Constitution. If the local government unit has not classified the tax, fee, charge or assessment, the petition shall be filed within 60 days after the later of:

(A) The last date, but no later than November 15, that the tax statements were mailed for the tax year in which the tax, fee, charge or assessment was imposed; or

(B) The date of imposition of the tax, fee, charge or assessment on the petitioner.

(b) If the local government unit adopts an ordinance or resolution classifying all or any of the taxes, fees, charges or assessments it imposes as subject to or not subject to section 11 or 11b, Ar-

ticle XI of the Oregon Constitution, as described in ORS 310.145, the petition shall be filed within 60 days after the governing body adopts the ordinance or resolution.

(5) In the case of a question concerning any tax, fee, charge or assessment that is characterized by the local government unit as an assessment for local improvements, the petition shall be filed within 60 days after the local government unit gives notice of its intention to characterize the charge as an assessment for local improvements. Notice may be given to affected property owners by the local government unit either when a local improvement district is formed, in a notice of intent to assess given by the local government unit or by other individual notice prior to assessment. Notice shall be given no later than the date the assessment is imposed. Notice given as provided under this subsection is in lieu of the notice required under subsection (9) of this section.

(6) In the case of a question concerning any taxes levied to pay principal and interest on bonded indebtedness approved by the governing body of a local government unit, the petition shall be filed within 60 days after the date the issuance of the bonded indebtedness was approved by the governing body of the local government unit if the resolution or ordinance of the governing body authorizing issuance of the bonded indebtedness includes a classification of the bonded indebtedness as subject to or not subject to the limits of section 11 or 11b, Article XI of the Oregon Constitution. If the local government unit has not classified the bonded indebtedness, the petition shall be filed within 60 days after the date specified in subsection (4)(a) of this section.

(7) In the case of a question concerning any taxes levied to pay principal and interest on bonded indebtedness not subject to the limits of section 11 or 11b, Article XI of the Oregon Constitution, that was approved by the electors of the local government unit at an election held on or after September 29, 1991, the petition shall be filed within 60 days after the date of the election at which the question of issuing the bonded indebtedness was approved by the electors of the local government unit.

(8) In the case of a question concerning the effect of section 11 or 11b, Article XI of the Oregon Constitution, on any tax, fee, charge or assessment imposed by the state, the petition shall be filed within 60 days after the first imposition of the tax, fee, charge or assessment by a state agency. For purposes of this subsection, a tax, fee, charge or assessment shall be considered imposed when it is due as provided by statute or when the state agency notifies a person that the tax, fee, charge or assessment is due.

(9) A local government unit:

(a) Shall give notice of its adoption of an ordinance or resolution classifying any of its taxes, fees, charges or assessments as not being subject to the limits of section 11 or 11b, Article XI of the Oregon Constitution, by publishing, within 15 days after adoption of the ordinance or resolution, an advertisement in a newspaper of general circulation in the county in which the local government unit is located or, if there is no newspaper of general circulation, in a newspaper of general circulation in a contiguous county.

(b) May give notice of its adoption of an ordinance or resolution specifying the authorized uses of the proceeds of bonded indebtedness by publishing, within 15 days after adoption of the ordinance or resolution, an advertisement in a newspaper of general circulation in the county in which the local government unit is located or, if there is no newspaper of general circulation, in a newspaper of general circulation in a contiguous county.

(10) A notice described in subsection (9) of this section shall:

(a) Appear in the general news section of the newspaper, not in the classified advertisements;

(b) Measure at least three inches square;

(c) Be printed in a type size at least equal to 8-point type; and

(d) State that the local government unit has adopted a resolution or ordinance:

(A) Classifying one or more of its taxes, fees, charges or assessments as not being subject to the limits of section 11 or 11b, Article XI of the Oregon Constitution, that the reader may contact a designated individual within the local government unit to obtain a copy of the ordinance or resolution and that judicial review of the classification of the taxes, fees, charges or assessments may be sought within 60 days of the date of the resolution or ordinance; or

(B) Specifying the authorized uses of the proceeds of bonded indebtedness, that the reader may contact a designated individual within the local government unit to obtain a copy of the ordinance or resolution and that judicial review of the specification of authorized uses may be sought within 60 days of the date of the resolution or ordinance.

(11) An ordinance or resolution that results in a mere change in the amount of a tax, fee, charge or assessment and does not result in a change in the characteristics or attributes of the tax, fee, charge or assessment, or contain a change in purpose to which the revenue is applied, may not be considered a change that may result in a proceeding commenced under subsection (4) of this section.

[(12) In the case of a question concerning the authorized uses of the proceeds of bonded indebtedness, the petition must be filed within 60 days after publication of the notice described in subsection (9)(b) of this section or, if the governing body has not published the notice described in subsection (9)(b) of this section, the petition must be filed within 180 days after the questioned use of the proceeds is made.]

(12) In the case of a question concerning the authorized uses of the proceeds of bonded indebtedness, the petition must be filed within 60 days after the adoption of the ordinance or resolution described in subsection (9)(b) of this section or, if the governing body has not published the notice described in subsection (9)(b) of this section, the petition must be filed within 180 days after the questioned use of the proceeds is made.

SECTION 4. ORS 441.555 is amended to read:

441.555. (1) To accomplish its purposes, an authority shall have the power to issue revenue obligations payable from the revenues derived by it from repayment of loans or from its ownership or sale of any one or more hospital facilities. The issuance of *[such]* revenue obligations *[shall be]* **is** governed by the provisions of subsections (2) to (8) of this section, and *[shall not be]* **is not** subject to the prior approval of the electors of the municipality.

(2) The authority shall issue revenue obligations only by bond resolution duly adopted by its board of directors. The bond resolution shall specify the public purposes for which the proceeds of the revenue obligations shall be expended, declare the estimated cost of carrying out such purposes, contain such covenants, and provide for the issuance and sale of revenue obligations in such form and amount as the directors determine. In declaring such cost, the directors may include the funds necessary for working capital during construction, reserves, interest during construction, the payment of organizational, planning, financing and legal expenses, the repayment of advances and the start-up costs. The bond resolution may provide that hospital facilities subsequently acquired or constructed by the authority shall be deemed betterments or additions to, or extensions of, the specified hospital facility, whether or not physically connected.

(3) The bond resolution shall provide for the establishment of one or more special funds, and such funds may be under the control of the board or one or more trustees. The bond resolution shall obligate the authority to deposit and expend the proceeds of the revenue obligations only into and from such fund or funds, and to set aside and pay into such fund or funds any fixed proportion or fixed amount of the revenues derived by it from any or all of its hospital facilities or other corporate activities, as the board finds in the best interest of the authority and the payment of its obligations. The authority may issue and sell revenue obligations payable as to interest and principal only out of such fund or funds.

(4) Any revenue obligations issued against any fund or funds provided for in subsection (3) of this section shall be a valid claim of the holder thereof only as against such special fund or funds, the proportion or amount of the revenues pledged to such fund or funds and such assets as the authority may have pledged. Each such revenue obligation shall state on its face that it is payable from a special fund or funds, naming the fund or funds and the resolution creating it or them.

(5) Any pledge of revenues or other moneys or obligations or assets made by an authority shall be valid and binding from the time that the pledge is made against any parties having subsequent claims of any kind in tort, contract, or otherwise against an authority, irrespective of whether such parties have actual notice thereof. The pledge shall be noted in the authority's minute book which shall be constructive notice thereof to all parties and neither the resolution nor other instrument

by which a pledge is created need be otherwise recorded, nor shall the filing of any financing statement under the Uniform Commercial Code be required to perfect such pledge. Revenues or other moneys or obligations or assets so pledged and later received by an authority shall immediately be subject to the lien of the pledge without any physical delivery or further act.

(6) The revenue obligations issued under the provisions of subsections (1) to (5) of this section shall bear such date or dates, mature at such time or times, be in such denominations, be in such form, either coupon or registered or both, carry such registration privileges, be made transferable, exchangeable and interchangeable, be payable in such medium, at such place or places, contain such covenants, and be subject to such terms of redemption as the board of directors shall declare in the bond resolution.

(7) Notwithstanding any other provision of law, the revenue obligations issued by an authority may be sold by the board of directors upon such terms and conditions and at such rate or rates of interest and for such price or prices as it may deem most advantageous to the authority, with or without public bidding. The authority may make contracts for future sale from time to time of revenue obligations by which the contract purchasers shall be committed to the prices, terms and conditions stated in such contract, and the board of directors may pay such consideration as it deems proper for such commitments.

(8) The board of directors may provide by resolution for the issuance of funding and refunding revenue obligations in order to [take up and] refund, **convert, purchase or restructure** any one or more series, or portion of a series, of outstanding revenue obligations at such time or times as it may determine. Such refunding revenue obligations may be sold or exchanged at par or otherwise as the board of directors determines is in the best interest of the authority.

(9) All revenue obligations issued pursuant to this section shall be legal securities [which] **that** may be used by any insured institution or trust company, as those terms are defined in ORS 706.008, for deposit with the State Treasurer or a county treasurer or city treasurer, as security for deposits in lieu of a surety bond under any law relating to deposits of public moneys and shall constitute legal investments for public bodies, trustees and other fiduciaries, banks, savings and loan associations, and insurance companies. All such revenue obligations and all coupons appertaining thereto shall be negotiable instruments within the meaning of and for all purposes of the law of this state.

Passed by Senate May 2, 2011

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 25, 2011

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

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Approved:

.....M.,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

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Kate Brown, Secretary of State