

Enrolled
House Bill 2278

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

CHAPTER

AN ACT

Relating to public borrowing for Coos Bay channel project; amending sections 11, 12, 13 and 14, chapter 746, Oregon Laws 2007; and declaring an emergency.

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

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

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

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

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

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

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

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

Sec. 12. The Legislative Assembly finds that:

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

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

(b) Authorization for the issuance of lottery bonds will increase the likelihood of federal funding for maintenance of the project, encourage the development of public and private

sector partnerships to continue the modernization and expansion of the Oregon International Port of Coos Bay, including the development and construction of modern multipurpose, multimodal terminal facilities for the Coos Bay harbor, and add new income that will directly benefit Oregon's dredging, construction or maritime industries.

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

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

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

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

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

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

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

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

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

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

(c) In the biennium beginning July 1, 2019, up to \$40 million in net proceeds of lottery bonds to the Coos Bay Channel Fund established in section 15, chapter 746, Oregon Laws 2007, for distribution to the primary sponsor after the director finds that the primary spon-

sor has taken action pursuant to the grant agreement required in section 14, chapter 746, Oregon Laws 2007, that triggers the distribution of bond proceeds described in this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Verify and certify to the director that the primary sponsor has prepared and submitted to the United States Army Corps of Engineers the tentatively selected plan report identifying the preferred alternative for the project.

(B) Verify and certify to the director that:

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

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

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

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

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

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

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

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

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

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

Passed by House July 6, 2015

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate July 6, 2015

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2015

Approved:

.....M,....., 2015

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2015

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Jeanne P. Atkins, Secretary of State