

Chapter 289

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Oregon Facilities Financing

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PUBLIC BORROWING AND BONDS

GENERAL PROVISIONS

289.005 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Authority" means the Oregon Facilities Authority created by this chapter.

(2) "Bonds" or "revenue bonds" means revenue bonds, notes, bond anticipation notes and any other evidence of indebtedness of the authority issued under the provisions of this chapter, including revenue refunding bonds, notwithstanding that the same may be secured by any federally guaranteed security, whether acquired by the authority or by a participating institution, or by mortgage, the full faith and credit or by any other lawfully pledged security of one or more participating institutions.

(3) "Cost" means the cost of:

(a) Construction, acquisition, alteration, enlargement, reconstruction and remodeling of a project, including all lands, structures, real or personal property, rights, rights of way, air rights, franchises, easements and interests acquired or used for or in connection with a project;

(b) Demolishing or removing any buildings or structures on land as acquired, including the cost of acquiring any lands to which such buildings or structures may be moved;

(c) All machinery and equipment;

(d) Financing charges, interest prior to, during and for a period after completion of construction and acquisition, reasonably required amounts to make the project operational, provisions for reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations and improvements;

(e) Architectural, actuarial engineering, financial and legal services, plans specifications, studies, surveys, estimates of costs and of revenues, administrative expenses, expenses necessary or incident to determining the feasibility or practicability of constructing the project; and

(f) Such other expenses as may be necessary or incident to a project, the financing of such project and the placing of the project in operation.

(4) "Cultural institution" means a public or nonprofit institution within this state which engages in the cultural, intellectual, scientific, environmental, educational or artistic enrichment of the people of this state. "Cultural institution" includes, without limitation, aquaria, botanical societies, historical societies, land conservation organizations, libraries, museums, performing arts associations or societies, scientific societies,

wildlife conservation organizations and zoological societies. "Cultural institution" does not mean any school or any institution primarily engaged in religious or sectarian activities.

(5) "Health care institution" means a public or nonprofit organization that provides health care and related services, including but not limited to the provision of inpatient and outpatient care, diagnostic or therapeutic services, laboratory services, medicinal drugs, nursing care, assisted living, elderly care and housing, including retirement communities, and equipment used or useful for the provision of health care and related services.

(6) "Housing institution" means a public or nonprofit organization that provides decent, affordable housing to low income persons.

(7) "Institution" means an institution for housing, higher education or prekindergarten through grade 12 education, a school for the handicapped, a health care institution or a cultural institution within this state.

(8) "Institution for higher education" means a public or nonprofit educational institution within this state authorized by law to provide a program of education beyond the high school level, including community colleges and associate degree granting institutions. "Institution for higher education" does not mean any school or any institution primarily engaged in religious or sectarian activities.

(9) "Institution for prekindergarten through grade 12 education" means an Oregon prekindergarten as defined in ORS 329.170, a public educational institution within this state authorized by law to provide a program of education for kindergarten through grade 12 or a nonprofit educational institution within this state registered as a private school under ORS 345.545 that provides a program of education for prekindergarten through grade 12. "Institution for prekindergarten through grade 12 education" does not mean a school or institution primarily engaged in religious or sectarian activities.

(10) "Nonprofit" means an institution, organization or entity exempt from taxation under section 501(c)(3) of the Internal Revenue Code as amended and in effect on the effective date of this chapter.

(11) "Participating institution" means a participating institution for health care, housing, higher education, a participating school for the handicapped or a participating cultural institution.

(12)(a) "Project" means the financing or refinancing, including without limitation, ac-

quisition, construction, enlargement, remodeling, renovation, improvement, furnishing or equipping, of the following:

(A) In the case of a participating institution that is an institution for higher education, an institution for prekindergarten through grade 12 education or a school for the handicapped, a structure or structures suitable for use as a dormitory or other multiunit housing facility for students, faculty, officers or employees, or a dining hall, student union, administration building, academic building, library, laboratory, research facility, classroom, athletic facility, health care facility, maintenance, storage or utility facility and other structures or facilities related to any of the structures required or used for the instruction of students, the conducting of research or the operation of an institution for higher education, an institution for prekindergarten through grade 12 education or a school for the handicapped. It shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended and shall further include any furnishings, equipment, machinery and other similar items necessary or convenient for the operation of an institution of higher education, an institution for prekindergarten through grade 12 education or a school for the handicapped, whether or not such items are related to a particular facility or structure financed under this chapter;

(B) In the case of a participating institution that is a housing institution, a structure or structures suitable for use as housing, including residences or multiunit housing facilities, administration buildings, maintenance, storage or utility facilities and other structures or facilities related to any of the structures required or used for the operation of the housing, including parking and other facilities or structures essential or convenient for the orderly provision of such housing. It shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the particular housing facility or structure in the manner for which its use is intended and shall further include any furnishings, equipment, machinery and other similar items necessary or convenient for the provision of housing, whether or not such items are related to a particular facility or structure financed under this chapter;

(C) In the case of a participating institution that is a cultural institution, a structure or structures suitable for its purposes, whether or not to be used to provide educational services, or research resources, in-

cluding use as or in connection with an administrative facility, aquarium, assembly hall, auditorium, botanical garden, exhibition hall, gallery, greenhouse, library, museum, scientific laboratory, theater or zoological facility. It shall also include supporting facilities, landscaping, site preparation, furniture, equipment, machinery and other similar items necessary or convenient for the operation of a cultural institution, whether or not such items are related to a particular facility or structure financed under this chapter, including books, works of art or other items for display or exhibition; and

(D) In the case of a participating institution that is a health care institution, a structure or structures suitable for its purposes, including hospital facilities, inpatient and outpatient clinics, doctors' offices, administration buildings, parking, maintenance, storage or utility facilities, nursing care or assisted living facilities, elderly care and housing facilities, including retirement communities, and other structures or facilities related to any of the structures required or used for the operation of the health care institution, including other facilities or structures essential or convenient for the orderly provision of such health care. It shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the particular health care facility or structure in the manner for which its use is intended and shall further include any working capital, furnishings, equipment, machinery and other similar items necessary or convenient for the provision of health care, whether or not such items are related to a particular facility or structure financed under this chapter, including borrowings needed to alleviate interim cash flow deficits of a health care institution.

(b) "Project" also includes any combination of one or more of the projects undertaken jointly by one or more participating institutions with each other or with other parties.

(c) "Project" does not include any facility used or to be used for sectarian instruction or as a place of religious worship or any facility which is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination.

(13) "School for the handicapped" means a public or nonprofit primary, secondary or post-secondary school within this state which serves students at least 70 percent of whom are handicapped as determined by one or more appropriate education, rehabilitation, medical or mental health authorities; is accredited by a recognized accrediting body;

and is determined by the authority to be a major resource of benefit to the handicapped. "School for the handicapped" does not mean any school or any institution primarily engaged in religious or sectarian activities. [1989 c.820 §2; 1991 c.408 §1; 2001 c.270 §1]

289.101 Findings; purpose. (1) The Legislative Assembly finds that by use of the powers and procedures described in this chapter for the assembling and financing of lands for housing, educational and cultural uses and for the construction and financing of facilities for such uses, financed through the issuance of revenue bonds secured solely by the properties and rentals thus made available, the state may be able to effect substantially the provisions of decent, affordable housing, the achievement of higher levels of learning and development of the intellectual capacities of citizens and expansion of the authorized services and resources for the intellectual and artistic enrichment of citizens.

(2) It is the purpose of this chapter to authorize the exercise of powers granted by this chapter by this state in addition to and not in lieu of any other powers it may possess. [1989 c.820 §1]

OREGON FACILITIES AUTHORITY

289.100 Oregon Facilities Authority; members; qualifications; term. (1) There is created a body politic and corporate to be known as the Oregon Facilities Authority. The authority is constituted a public instrumentality, and the exercise by the authority of the powers conferred by this chapter shall be considered and held to be the performance of an essential public function.

(2) The authority shall consist of five members who shall be residents of this state, not more than three of whom shall be members of the same political party. The State Treasurer shall appoint the members. At least one of the members shall be a person knowledgeable in the field of state and municipal finance. At least one of the members shall be a person knowledgeable in the building construction field.

(3) Upon the expiration of the term of any member, a successor shall be appointed for a term of four years. The State Treasurer shall fill any vacancy for the remainder of the unexpired term. [1989 c.820 §3; 1991 c.408 §2; 2001 c.261 §1]

289.105 Official action to undertake project. The undertaking of any eligible project must be requested by official action of the participating institution taken at a regular or duly called special meeting thereof by the affirmative vote of a majority of the

members of the institution's board of directors. [1989 c.820 §5]

289.110 Duties and powers with respect to projects. In addition to any other powers granted by law, in relation to an eligible project, the state, acting through the State Treasurer or a designee thereof, may:

(1) Enter into agreements to finance the costs of an eligible project by lending the proceeds of bonds authorized by this chapter to any participating institution under such terms and with such security as the state may approve;

(2) Lease and sublease eligible projects to any participating institution in such manner that rents to be charged for the use of such projects shall be established, and revised from time to time as necessary, so as to produce income and revenue sufficient to provide for the prompt payment of principal of and interest on all bonds issued under this section when due, and the lease shall also provide that the lessee shall be required to pay all expenses of the operation and maintenance of the project including, but without limitation, adequate insurance thereon and insurance against all liability for injury to persons or property arising from the operation thereof, and all taxes and special assessments levied upon or with respect to the leased premises and payable during the term of the lease, during which term ad valorem taxes in the same amount and to the same extent as though the lessee were the owner of all real and personal property comprising the project;

(3) Pledge and assign to the holders of such bonds or a trustee therefor all or any part of the revenues of one or more eligible projects owned or to be acquired by the state, and define and segregate such revenues or provide for the payment thereof to a trustee;

(4) Mortgage or otherwise encumber eligible projects in favor of the holders of such bonds or a trustee therefor. However, in creating any such mortgages or encumbrances, the state cannot obligate itself except with respect to the project;

(5) Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers granted by this section, or in the performance of its covenants or duties, or in order to secure the payment of its bonds, including a contract entered into prior to the construction, acquisition and installation of the eligible project authorizing the lessee, subject to such terms and conditions as the state shall find necessary or desirable and proper, to provide for the construction, acquisition and installation of the buildings,

improvements and equipment to be included in the project by any means available to the lessee and in the manner determined by the lessee;

(6) Enter into and perform such contracts and agreements with participating institutions as the respective boards of directors may consider proper and feasible for or concerning the planning, construction, installation, lease, or other acquisition, and the financing of such facilities, which contracts and agreements may establish a body as may be considered proper for the supervision and general management of the facilities of the eligible project; and

(7) Accept from any authorized agency of the federal government loans or grants for the planning, construction, acquisition, leasing, or other provision of any eligible project, and enter into agreements with such agency respecting such loans or grants. [1989 c.820 §6]

289.115 Functions. In carrying out its duties under this chapter, the Oregon Facilities Authority, acting for and in behalf of the state as its duly authorized agency, may:

(1) Acquire, construct and hold in whole or in part any lands, buildings, easements, water and air rights, improvements to lands and buildings and capital equipment to be located permanently or used exclusively on such lands or in such buildings, which are considered necessary in connection with an eligible project to be situated within this state, and construct, reconstruct, improve, better and extend such projects, and enter into contracts therefor; and

(2) Sell and convey all properties acquired in connection with eligible projects, including without limitation the sale and conveyance thereof subject to any mortgage and the sale and conveyance thereof under an option granted to the lessee of the eligible project, for such price, and at such time as the state may determine. However, no sale or conveyance of such properties shall ever be made in such manner as to impair the rights of interests of the holder, or holders, or any bonds issued under the authority of this chapter. [1989 c.820 §7; 1991 c.408 §3]

289.120 Limitation on manner of operating project and expenditure of funds. Except as provided in ORS 289.115 (2), the state shall not have power to operate any eligible project as a business or in any manner whatsoever. Nothing in this chapter authorizes the state to expend any funds on any eligible project, other than the revenues of such projects, or the proceeds of revenue bonds issued under this chapter, or other funds granted to the state for the purposes of an eligible project. [1989 c.820 §8]

289.125 Rules. (1) The Oregon Facilities Authority shall adopt by rule standards by which to determine the eligibility of projects for bond financing pursuant to this chapter. In determining such standards, the authority shall consider all relevant data. The standards of the authority shall provide that projects are approved in accordance with criteria reflecting the benefits to the state. Such criteria shall include, but need not be limited to, the following:

(a) Supporting projects that increase the number of decent, affordable housing units in this state.

(b) Expanding the educational resources in this state.

(c) Expanding the cultural resources in this state.

(2) Upon determining a project as eligible, the authority shall forward the application to the State Treasurer, who shall determine whether to issue the revenue bonds.

(3) The authority may treat as a single eligible project for bonding purposes any number of projects determined to be eligible projects.

(4) The authority shall collect the fees set forth in subsection (5) of this section from an applicant that seeks to have a project declared eligible for financing. The fee may be collected even though the project has not been determined to be eligible for financing. Moneys collected under this subsection are continuously appropriated to the authority for the purpose of administration or funding of any program it is authorized to operate.

(5) The fees described in subsection (4) of this section are as follows:

(a) \$250 for an application of not to exceed \$500,000.

(b) \$500 for an application of more than \$500,000.

(c) A closing fee of not to exceed one-half of one percent of the total bond issue for the project, as determined by the authority.

(6) The fees received under subsection (5) of this section shall be credited to and deposited in the Oregon Facilities Authority Account established under ORS 289.130. [1989 c.820 §4; 1991 c.408 §4]

289.130 Oregon Facilities Authority Account. The Oregon Facilities Authority Account is created separate and distinct from the General Fund. The account is an investment account for purposes of ORS 293.701 to 293.820. Interest on the account shall be credited to and deposited in the account. The account is continuously appropriated to the Oregon Facilities Authority and

may be used to meet administrative expenses of the authority. [1989 c.820 §4a; 1991 c.408 §5; 2001 c.261 §2]

BONDS

289.200 Issuance of revenue bonds; role of State Treasurer. (1) If the State Treasurer determines that revenue bonds should be issued:

(a) The State Treasurer may authorize and issue in the name of the State of Oregon revenue bonds secured by revenues from eligible projects to finance or refinance in whole or part the cost of acquisition, purchase, construction, reconstruction, installations improvement, betterment or extension of projects. The bonds shall be identified by project and issued in the manner prescribed by ORS 286.010, 286.020 and 286.105 to 286.135, and refunding bonds may be issued to refinance such revenue bonds.

(b) The State Treasurer shall designate the underwriter, trustee and bond counsel, if any, and enter into appropriate agreements with each to carry out the provisions of this chapter. An agreement with bond counsel designated by the State Treasurer under this section is subject to the provisions related to services provided by bond counsel under ORS 288.523, and the appointment must be approved by the Attorney General as required by ORS 288.523.

(2) Any trustee designated by the State Treasurer to carry out all or part of the powers specified in ORS 289.110 must agree to furnish financial statements and audit reports for each bond issue.

(3) The State Treasurer shall be the applicable elected representative for purposes of approving the issuance of revenue bonds under this chapter as to the extent such approval is required under section 147(f) of the Internal Revenue Code of 1986, as amended, or any successor provision thereto.

(4) The State Treasurer shall collect data from the Oregon Facilities Authority regarding the amount and nature of bonded indebtedness in Oregon health care institutions financed through the authority. [1989 c.820 §9; 1991 c.408 §6; 1995 c.727 §14; 2001 c.536 §8]

289.205 Criteria for bond issuance. (1) In determining whether to issue revenue bonds under this chapter, the State Treasurer shall consider:

(a) The bond market for the types of bonds proposed for issuance.

(b) The terms and conditions of the proposed issue.

(c) Such other relevant factors as the State Treasurer considers necessary to protect the financial integrity of the state.

(2) Bonds authorized under this chapter shall be issued in accordance with the provisions of ORS 288.515 to 288.550.

(3) Reasonable administrative expenses of the State Treasurer shall be charged against bond proceeds or project revenues. [1989 c.820 §10]

289.210 Refunding bonds. The State Treasurer shall have the power, whenever the treasurer considers refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured. The refunding bonds may be exchanged for bonds to be refunded and the proceeds applied to the purchase, redemption or payment of such bonds. [1989 c.820 §11]

289.215 Validity of bonds not affected by other matters regarding facility. The validity of bonds issued under this chapter shall not be dependent on nor be affected by the validity or regularity of any proceeding relating to the acquisition, purchase, construction, reconstruction, installation, improvement, betterment or extension of the project for which the bonds are issued. The official action authorizing such bonds may provide that the bonds shall contain a recital that they are issued pursuant to this chapter and such recital shall be conclusive evidence of their validity and of the regularity of their issuance. [1989 c.820 §12]

289.220 Covenants regarding bond issuance. The official action authorizing the issuance of bonds under this chapter to finance or refinance in whole or in part, the acquisition, purchase, construction, reconstruction, installation, improvement, betterment or extension of any project may contain covenants, notwithstanding that such covenants may limit the exercises of powers conferred by this chapter in the following respects and in such other respects as the state, acting through the State Treasurer, or the designee of the treasurer may decide:

(1) The rents to be charged for the use of properties acquired, purchased, constructed, reconstructed, installed, improved, bettered or extended under the authority of this chapter;

(2) The use and disposition of the revenues of such projects;

(3) The creation and maintenance of sinking funds and the regulation, use and disposition thereof;

(4) The creation and maintenance of funds to provide for maintaining the eligible project and replacement of properties depreciated, damaged, destroyed or condemned;

(5) The purpose or purposes to which the proceeds of sale of bonds may be applied and the use and disposition of such proceeds;

(6) The nature of mortgages or other encumbrances on the eligible project made in favor of the holder or holders of such bonds or a trustee therefor;

(7) The events of default and the rights and liabilities arising thereon and the terms and conditions upon which the holders of any bonds may bring any suit or action on such bonds or on any coupons appurtenant thereto;

(8) The issuance of other or additional bonds or instruments payable from or constituting a charge against the revenue of the eligible project;

(9) The insurance to be carried upon the eligible project and the use and disposition of insurance moneys;

(10) The keeping of books of account and the inspection and audit thereof;

(11) The terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and the terms and conditions upon which such declaration and its consequences may be waived;

(12) The rights, liabilities, powers and duties arising upon the breach by the municipality or redevelopment agency of any covenants, conditions or obligations;

(13) The appointing of and vesting in a trustee or trustees of the right to enforce any covenants made to secure or to pay the bonds, the powers and duties of such trustee or trustees and the limitation of their liabilities;

(14) The terms and conditions upon which the holder or holders of the bonds, or the holders of any proportion or percentage of them, may enforce any covenants made under this chapter;

(15) A procedure by which the terms of any official action authorizing bonds or of any other contract with bondholders, including but not limited to an indenture of trust or similar instrument, may be amended or abrogated, and the amount of bonds the holders of which may consent thereto, and the manner in which such consent may be given; and

(16) The subordination of the security of any bonds issued under this chapter and the payment of principal and interest thereof, to the extent considered feasible and desirable by the state, to other bonds or obligations of the state issued to finance the eligible project or that may be outstanding when the bonds thus subordinated are issued and delivered. [1989 c.820 §13]

289.225 Sources of bond repayment restricted; recitations in bonds. (1) Re-

venue bonds issued under this chapter shall not:

(a) Be payable from nor charged upon any funds other than the revenue pledged to the payment thereof, nor shall the state be subject to any liability thereon. No holder or holders of such bonds shall ever have the right to compel any exercise of the taxing power of the state to pay any such bonds or the interest thereon, nor to enforce payment thereof against any property of the state except those projects or portions thereof, mortgaged or otherwise encumbered under the provisions and for the purposes of this chapter.

(b) Constitute a charge, lien or encumbrance, legal or equitable, upon any property of the state, except those eligible projects, or portions thereof, mortgaged or otherwise encumbered, under the provisions and for the purposes of this chapter.

(2) Each bond issued under this chapter shall recite in substance that the bond, including interest thereon, is payable solely from the revenue pledged to the payment thereof. No such bond shall constitute a debt of the state or a lending of the credit of the state within the meaning of any constitutional or statutory limitation. However, nothing in this chapter is intended to impair the rights of holders of bonds to enforce covenants made for the security thereof as provided in ORS 289.230. [1989 c.820 §14]

289.230 Actions by bondholders to enforce rights. Subject to any contractual limitation binding upon the holders of any issue of revenue bonds, or a trustee therefor, including but not limited to the restriction of the exercise of any remedy to a specified proportion or percentage of such holders, any holder of bonds, or any trustee therefor, for the equal benefit and protection of all bondholders similarly situated, may:

(1) By action or proceeding for legal or equitable remedies, enforce their rights against the state and any of its officers, agents and employees, and may require and compel the state or any such officers, agents or employees to perform and carry out its and their duties and obligations under this chapter and its and their covenants and agreements with bondholders;

(2) By action require the state to account as if it was the trustee of an express trust;

(3) By action enjoin any acts or things which may be unlawful or in violation of the right of the bondholders;

(4) Bring action upon the bonds;

(5) Foreclose any mortgage or lien given under the authority of this chapter and cause the property standing as security to be sold

under any proceedings permitted by law or equity; and

(6) Exercise any right or remedy conferred by this chapter without exhausting and without regard to any other right or remedy conferred by this chapter or any other law of this state, none of which rights and remedies is intended to be exclusive of any other, and each is cumulative and in addition to every other right and remedy. [1989 c.820 §15]

289.235 Loan of bond proceeds for projects; state not required to have ownership or leasehold interest. The state, acting through the State Treasurer and the Oregon Facilities Authority, or either of them, may lend the proceeds of the bonds authorized by this chapter for eligible projects without the necessity of the state having any ownership or leasehold interest in the eligible projects. Loans made pursuant to this section shall be secured to the extent considered necessary or desirable by the

State Treasurer and the authority to assure repayment of the bonds. [1989 c.820 §16; 1991 c.408 §7]

289.240 Report of bonding activities; rules. (1) Within 90 days following the closing of each fiscal year, the Oregon Facilities Authority shall report on its operations to the Governor, State Treasurer and the Legislative Assembly. The report shall include a summary of the authority's activities relating to bonds issued under this section.

(2) In accordance with any applicable provision of ORS chapter 183, the authority may adopt such rules as it considers necessary to carry out its duties, functions and powers under this chapter. [1989 c.820 §18]

CHAPTER 290

[Reserved for expansion]

PUBLIC BORROWING AND BONDS
