

Chapter 289

2013 EDITION

Oregon Facilities Financing

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PUBLIC BORROWING

GENERAL PROVISIONS

289.005 Definitions for ORS chapter 289. 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, as defined in ORS 286A.001.

(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) Demolition or removal of buildings or structures on land as acquired, including the cost of acquiring lands to which the 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;

(f) Management, operation or funding of a qualified program; and

(g) Other expenses that are necessary or incident to a project, the financing of the project or 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 within this state 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 within this state that provides decent, affordable housing to low income persons.

(7) "Institution" means a cultural institution, a health care institution, a housing institution, an institution for higher education, an institution for prekindergarten through grade 12 education, a school for persons with disabilities or another nonprofit.

(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 that provides a program of education for prekindergarten through grade 12 as a private school. "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 within this state exempt from taxation under section 501(c)(3) of the Internal Revenue Code as defined in ORS 314.011.

(11)(a) "Project" means the financing or refinancing of the costs, including, without limitation, acquisition, construction, enlargement, remodeling, renovation, improvement, furnishing and 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 persons with disabilities, 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 persons with disabilities. 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 persons with disabilities, 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, including 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, in-

cluding books, works of art or other items for display or exhibition.

(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.

(E) In the case of a participating institution that is a nonprofit not otherwise specified in this subsection, a structure or structures suitable for its purposes, including facilities or structures essential or convenient for the orderly operations of the nonprofit. It shall also include acquisition of interests in land, landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the nonprofit, whether or not the items are related to a particular facility or structure financed under this chapter, including borrowings needed to alleviate interim cash flow deficits of the nonprofit.

(F) In the case of a participating institution, costs to manage, operate or fund a qualified program or costs to alleviate interim cash flow deficits of the 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 the financing or refinancing of the costs of a 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.

(12) "Qualified program" means a financing program, or other activities, of a participating institution that is eligible for

financing through the issuance of revenue bonds the interest on which is:

(a) Excluded from gross income for federal income tax purposes; or

(b) Eligible for a federal tax credit or subsidy under the Internal Revenue Code.

(13) “School for persons with disabilities” means a public or nonprofit primary, secondary or post-secondary school within this state that serves students at least 70 percent of whom are persons with disabilities 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 persons with disabilities. “School for persons with disabilities” 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; 2007 c.70 §74; 2007 c.783 §113; 2007 c.785 §1; 2010 c.3 §1; 2011 c.301 §2]

289.010 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, cultural or other nonprofit uses and for the construction and financing of facilities for those uses, financed through the issuance of revenue bonds secured solely by the properties and rentals thus made available, the state may be able to increase the availability of decent, affordable housing, the achievement of higher levels of learning and development of the intellectual capacities of citizens, the expansion of the authorized services and resources for the intellectual and artistic enrichment of citizens, the advancement of nonprofit activities and services and the general well-being 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; 2007 c.71 §89; 2007 c.785 §2]

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 is the performance of an essential public function.

(2) The authority consists of seven members who must be residents of this state, not more than four of whom are members of the same political party. The State Treasurer

shall appoint the members, and members serve at the pleasure of the State Treasurer. At least one of the members must be an individual knowledgeable in the field of state and municipal finance. At least one of the members must be an individual knowledgeable in the building construction field.

(3) Upon the expiration of the term of a member, the State Treasurer shall appoint a successor for a term of four years.

(4) The State Treasurer shall appoint an individual to fill a vacancy for the remainder of the unexpired term. [1989 c.820 §3; 1991 c.408 §2; 2001 c.261 §1; 2007 c.785 §3]

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. (1) In addition to any other powers granted by law, the state, acting through the State Treasurer or a designee of the State Treasurer, may:

(a) Enter into agreements to finance the costs of an eligible project by lending the proceeds of bonds authorized by this chapter to a participating institution under terms and with security approved by the state.

(b) Lease and sublease eligible projects to a participating institution subject to subsection (2) of this section.

(c) Pledge or assign all or part of the revenues of one or more eligible projects owned or to be acquired by the state to the holders of bonds issued under this chapter or to a trustee for the holders, and segregate the revenues or provide for payment of the revenues to the trustee.

(d) Mortgage or otherwise encumber eligible projects in favor of the holders of bonds issued under this chapter or a trustee for the holders without obligating the state except with respect to the project.

(e) Make contracts, execute instruments and do what is necessary or desirable to exercise the powers granted by this chapter, to perform the covenants or duties of this state or to secure the payment of bonds issued under this chapter. Contracts that may be made by the state include contracts entered into prior to construction, acquisition, installation or operation of an eligible project that authorize, subject to terms and conditions the state finds necessary or desirable, a lessee or other person to provide for construction, acquisition, installation, sale or operation of buildings, improvements, land,

equipment or other resources to be included in the project.

(f) Enter into and perform contracts and agreements with participating institutions for the planning, construction, installation, acquisition, sale, operation, leasing or financing of facilities, land or other resources of an eligible project, including a contract or agreement that establishes a body for the supervision and general management of the facilities.

(g) Accept loans or grants for the planning, construction, installation, acquisition, sale, operation, leasing or other provision of an eligible project from an authorized agency of the federal government, and enter into agreements with the agency respecting the loans or grants.

(2) A lease or sublease entered into under subsection (1)(b) of this section must provide that:

(a) Rents charged for the use of the project are established and revised as necessary to produce sufficient revenue to allow for payment of the principal of and interest on bonds issued under this chapter when due; and

(b) The lessee or sublessee is required to pay:

(A) The expenses of the operation and maintenance of the project including, but not limited to, adequate insurance on the project and insurance against liability for injury to persons or property arising from the operation of the project; and

(B) The taxes and special assessments levied upon the leased or subleased premises and payable during the term of the lease or sublease.

(3) During the term of a lease or sublease entered into under subsection (1)(b) of this section, ad valorem taxes must be imposed on the real and personal property of the eligible project in the same manner as the taxes would be imposed if the lessee or sublessee were the owner of the eligible project. [1989 c.820 §6; 2005 c.22 §212; 2007 c.785 §4; 2010 c.3 §2]

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; fees. (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 the standards, the authority shall consider all relevant data. The standards of the authority must provide that projects are approved in accordance with criteria reflecting the benefits to the state. Criteria include, but need not be limited to:

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

(b) Expanding the educational resources in this state; or

(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 identified in subsection (5)(a) of this section may be collected even though the project has

not been determined to be eligible for financing.

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

(a) An application fee determined by the Oregon Facilities Authority by rule.

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

(6) The authority shall deposit fees received under subsection (5) of this section in the Oregon Facilities Authority Account established under ORS 289.130. [1989 c.820 §4; 1991 c.408 §4; 2007 c.785 §5]

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 293.857. 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; role of Oregon Facilities Authority; fees. (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, extension, management, operation or funding of projects. The bonds shall be identified by project and issued in the manner prescribed by ORS chapter 286A.

(b) The State Treasurer shall designate the trustee, financial advisor 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 286A.130. The powers conferred on a related agency under ORS chapter 286A do not apply to the Oregon Facilities Authority with respect to the designation of trustee, financial advisor and bond counsel.

(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 is the applicable elected representative for purposes of approving the issuance of revenue bonds under this chapter to the extent approval is required under section 147(f) of the Internal Revenue Code.

(4) The State Treasurer shall collect data from the 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; 2007 c.783 §114; 2010 c.3 §3]

289.205 Expenses of State Treasurer.

Reasonable administrative expenses of the State Treasurer shall be charged against bond proceeds or project revenues. [1989 c.820 §10; 2007 c.783 §115]

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 project. The validity of bonds issued under this chapter is not dependent on or affected by the validity or regularity of any proceeding relating to the acquisition, purchase, construction, reconstruction, installation, improvement, betterment, extension, management, operation or funding 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; 2010 c.3 §4]

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, extension, management, operation or funding of a project may contain covenants that limit the exercises of powers conferred by this chapter in the following respects and in 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, extended, managed, operated or funded under the authority of this chapter;

(2) The use and disposition of the revenues of 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; 2010 c.3 §5]

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