

Enrolled
House Bill 2729

Sponsored by Representative BURLEY; Representatives HASS, WHISNANT, Senators MORRISETTE, WESTLUND (at the request of Tom Tuchmann)

CHAPTER

AN ACT

Relating to community forest authorities; and declaring an emergency.

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

SECTION 1. As used in sections 1 to 15 of this 2005 Act, unless the context requires otherwise:

- (1) "Authority" means a community forest authority created under section 4 of this 2005 Act.
- (2) "Board" means the board of directors of a community forest authority.
- (3) "Community forestlands" means private lands that are zoned and permanently managed for commercial forestland use and any interests in those private lands, including related roads or other improvements financed by a community forest authority.
- (4) "Municipality" means a city or county.

SECTION 2. To provide the people of the State of Oregon with renewable commercial forest resources that promote community stability and sound conservation practices, the Legislative Assembly finds that it is necessary and desirable to authorize the creation of community forest authorities having the power to finance community forestlands and to authorize those authorities to issue revenue bonds and other obligations for that purpose.

SECTION 3. The governing body of a municipality may create a community forest authority under section 4 of this 2005 Act. An authority may issue obligations on behalf of the municipality creating the authority to finance community forestlands. An authority may not be created or maintained for a purpose other than to finance community forestlands as described in sections 1 to 15 of this 2005 Act.

SECTION 4. (1) Upon the written request of three individuals or upon its own motion, the governing body of a municipality may create a community forest authority for the purpose of financing community forestlands.

(2) The governing body of a municipality may create a community forest authority by ordinance or resolution adopted following a public hearing held according to the laws of the municipality. The ordinance or resolution shall set forth:

- (a) The name of the authority.
- (b) The number of directors of the authority.
- (c) The term of office of the directors.

(d) Other provisions that the governing body determines are necessary and appropriate and not inconsistent with the provisions of sections 1 to 15 of this 2005 Act.

(3) Upon adoption of an ordinance or resolution creating a community forest authority, the authority is deemed created.

(4) A community forest authority created under this section has the power and authority necessary to perform its duties under sections 1 to 15 of this 2005 Act.

(5) The governing body that creates a community forest authority under this section may, at its sole discretion:

(a) Alter or change the structure, organization, programs or activities of the authority, subject to any limitations imposed by law or contract; and

(b) Dissolve the authority at any time if the authority has no outstanding revenue bonds or other obligations or if the authority makes arrangements regarding outstanding revenue bonds or other obligations that are satisfactory to creditors.

SECTION 5. (1) The governing body of a municipality that creates a community forest authority under section 4 of this 2005 Act shall appoint a board of directors containing not fewer than five nor more than 11 directors to manage and control the authority. At least one-third of the directors must represent conservation interests. At least one-third of the directors must represent business interests and one director must serve as a member of the governing body that created the authority. The balance of the directors must be members of the public. A director who is a member of the governing body that created the authority shall serve as a director only as long as that director is a current member of the governing body.

(2) The term of office of directors of an authority may not exceed four years and the directors serve at the pleasure of the governing body of the municipality.

(3) The directors of an authority serve without compensation but may be reimbursed for expenses incurred in the performance of their duties.

(4) The board of directors of an authority shall adopt rules for conducting meetings and carrying out the duties of the board. Decisions of the board must be recorded in a minute book that is a public record. A majority of the directors of the board constitutes a quorum for the transaction of business and a majority of directors present and voting is sufficient for the passage of a motion or a resolution.

(5) The board may employ and compensate employees, bond counsel, financial advisors, feasibility consultants, accountants, attorneys or other advisors that the board deems necessary and appropriate.

SECTION 6. A community forest authority created under section 4 of this 2005 Act does not have the power or authority to levy taxes.

SECTION 7. Except as otherwise provided in section 6 of this 2005 Act, a community forest authority shall have the power necessary to accomplish the purpose of financing community forestlands under sections 1 to 15 of this 2005 Act, including the power to:

(1) Sue and be sued in its own name.

(2) Enter into agreements relating to the operation of community forestlands upon terms and conditions the board deems appropriate.

(3) Borrow money by issuing notes, revenue bonds or other revenue obligations for the purpose of carrying out its powers.

(4) Mortgage, assign and pledge its assets, or a portion of its assets, whether then owned or thereafter acquired, to pledge and assign the revenues and receipts from the assets, to acquire, hold and dispose of mortgages or other similar documents relating to community forestlands and to arrange and provide for guarantees and other security agreements.

(5) Lend money to a nonprofit corporation for the acquisition, furnishing or extension of and improvements to community forestlands.

(6) Enter into contracts, leases and other undertakings in its own name.

(7) Adopt and amend ordinances and resolutions.

SECTION 8. (1) To accomplish its purposes, a community forest authority created under section 4 of this 2005 Act may issue revenue bonds or other revenue obligations payable from

the revenues derived from the repayment of loans to nonprofit corporations whose purpose is to own and operate community forestlands. The issuance of revenue bonds or other revenue obligations is governed by the provisions of this section and is not subject to the prior approval of the electors of the municipality that created the authority.

(2) An authority may issue and sell revenue bonds or other revenue obligations payable as to principal and interest only out of the fund or funds established under this section or other assets of the authority that are pledged by the board of directors to secure the revenue bonds or other revenue obligations. The bond resolution:

(a) Must specify the public purposes for which the proceeds of the revenue bonds or other revenue obligations will be expended and declare the estimated cost of carrying out those purposes.

(b) Must contain covenants and provide for the issuance and sale of revenue bonds or other revenue obligations in a form, amount and manner that the directors determine. In declaring the estimated cost, the directors may include the moneys necessary for working capital, reserves, capitalized interest, the payment of financing and legal expenses, the repayment of advances and the start-up costs.

(c) May provide that community forestlands subsequently acquired by a nonprofit corporation shall be deemed betterments or additions to, or extensions of, the community forestlands, whether or not physically connected.

(d) Must provide for the establishment of one or more special funds under the control of the board or a trustee.

(e) Must obligate the authority to deposit and expend the proceeds of the revenue obligations only into and from the fund or funds established under this section and to set aside and pay into the fund or funds a fixed proportion or fixed amount of the revenues derived from the community forestlands or other corporate activities as the board finds in the best interest of the authority and the payment of its obligations.

(3) A revenue bond or other revenue obligation issued against a fund or funds established under this section is a valid claim of the holder only as against the fund or funds, the proportion or amount of the revenues pledged to the fund or funds and the other assets pledged, assigned or encumbered by the authority to secure the revenue bond or other revenue obligation. Each revenue bond or other revenue obligation must state on its face that:

(a) The bond or obligation is payable from a special fund or funds and name the fund or funds and the resolution that established the fund or funds; or

(b) That the bond or obligation is payable from other assets and identify those other assets and the resolution pledging, assigning or encumbering them.

(4) A pledge, assignment or encumbrance of revenues or other moneys or obligations or other assets made by an authority shall be valid and binding from the time that the pledge or assignment is made against a party with a subsequent claim of any kind in tort, contract, or otherwise against the authority, irrespective of whether the party has actual notice of the pledge, assignment or encumbrance. The pledge, assignment or encumbrance must be noted in the board's minute book or bond transcripts, which shall be constructive notice thereof to all parties, and neither the resolution nor other instrument by which a pledge, assignment or encumbrance is created need be otherwise recorded, nor shall the filing of a financing statement under the Uniform Commercial Code be required to perfect the pledge, assignment or encumbrance. Revenues or other moneys or assets pledged, assigned or encumbered and later received by an authority are subject to the lien of the pledge immediately without physical delivery or further act.

(5) A revenue bond or other revenue obligation issued under the provisions of this section shall bear the date or dates, mature at the time or times, be in denominations and in a form, either coupon or registered or both, carry registration privileges, be made transferable, exchangeable and interchangeable, be payable in the medium, at the place or places, contain

the covenants and be subject to the terms of redemption that the board may declare in the bond resolution.

(6) The revenue bonds or other revenue obligations issued by an authority may be sold by the board upon the terms and conditions and at the rate or rates of interest and for the price or prices that the authority deems most advantageous to the authority, with or without public bidding. The authority may make contracts for future sale from time to time of revenue bonds or other revenue obligations by which the contract purchasers are committed to the prices, terms and conditions stated in the contract, and the board may pay the consideration that the board deems proper for the commitments.

(7) The board by resolution may provide for the issuance of funding and refunding revenue bonds or other revenue obligations in order to take up and refund a series, or portion of a series, of outstanding revenue bonds or other revenue obligations at a time determined by the board. Refunding revenue bonds or other revenue obligations may be sold or exchanged at a price that the board determines is in the best interest of the authority.

(8) A revenue bond or other revenue obligation issued pursuant to this section is a legal security 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 a law relating to deposits of public moneys and constitutes legal investments for public bodies, trustees and other fiduciaries, banks, savings and loan associations, and insurance companies. All revenue bonds and obligations and all coupons appertaining thereto shall be negotiable instruments within the meaning of and for all purposes of the law of this state.

SECTION 9. A community forest authority created under section 4 of this 2005 Act may borrow from banks, investment banks or other lenders sums of money on terms that the board deems necessary or advisable. An authority may also issue, sell and assume bond anticipation notes or the equivalent that bear a date, mature at a time, be in denominations and in a form, be payable in a medium, at a place, and be subject to the terms of redemption that the board deems necessary or advisable.

SECTION 10. Revenue bonds and other revenue obligations of a community forest authority created under section 4 of this 2005 Act are not a general obligation of the municipality nor a charge upon the tax revenues of the municipality.

SECTION 11. The board of directors of a community forest authority created under section 4 of this 2005 Act shall establish loan repayment terms and other charges at least adequate to pay the principal of and interest on the obligations of the authority as the same become due, including payments to a special fund or funds, together with the financing and other costs of the authority.

SECTION 12. (1) The powers and responsibilities provided in sections 1 to 15 of this 2005 Act may be exercised and discharged by two or more community forest authorities acting jointly to effectuate the purposes of sections 1 to 15 of this 2005 Act. In addition, one or more community forest authorities may authorize by resolution, ordinance or agreement the issuance of revenue bonds or other revenue obligations on behalf of the authorities or to otherwise exercise the powers of an authority within the boundaries of the authorities.

(2) A community forest authority may not finance the acquisition of community forestlands located outside the boundaries of the municipality that created the authority without the written consent of each municipality in which the community forest is located.

SECTION 13. (1) A community forest authority created under section 4 of this 2005 Act is deemed a municipal corporation performing a public function. An authority, all assets owned by the authority, the income earned by those assets and the interest earned by revenue bonds or other revenue obligations issued by an authority are exempt from taxation in the State of Oregon.

(2) Notwithstanding subsection (1) of this section:

(a) A municipality shall determine the extent to which community forestlands acquired or financed by an authority and located within the boundaries of the municipality are subject to property taxation.

(b) Real and personal property owned by the authority and leased to a third party is subject to property taxation if the property would be subject to taxation if owned by the lessee of the property.

(c) A district, as defined in ORS 198.010 or 198.180, may elect to continue imposing taxes on property within the district that is acquired or financed by an authority and is otherwise exempt from property taxation under this section without regard to the determination of a municipality under paragraph (a) of this subsection.

(3) Revenue bonds issued by an authority are deemed to be securities issued by a political subdivision of the State of Oregon.

SECTION 14. The earnings of a community forest authority created under section 4 of this 2005 Act in excess of the amount required for the retirement of indebtedness or the accomplishment of the purposes of sections 1 to 15 of this 2005 Act shall not inure to the benefit of a person or body other than the municipality creating the authority. An authority may transfer, from time to time, to the municipality creating the authority any excess moneys not needed to pay the authority's expenses or to pay the authority's bonds or other obligations, and the municipality may use such transferred funds for any lawful purpose of the municipality. Upon dissolution of an authority, any asset remaining after provision for payment of the obligations and expenses of the authority becomes an asset of the municipality.

SECTION 15. (1) Sections 1 to 15 of this 2005 Act contain complete authority for the organization of a community forest authority and for the issuance and sale of revenue bonds, including refunding revenue bonds, and other revenue obligations.

(2) ORS 288.320 and ORS chapters 198, 279A, 279B and 294 do not apply to the organization of an authority and the issuance and sale of revenue bonds pursuant to sections 1 to 15 of this 2005 Act.

(3) Nothing in sections 1 to 15 of this 2005 Act restricts or limits a power that an authority has under a law of this state or the charter of the municipality creating the authority except as explicitly provided in sections 1 to 15 of this 2005 Act.

SECTION 16. This 2005 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect on its passage.

Passed by House May 13, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate June 27, 2005

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President of Senate

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M,....., 2005

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Secretary of State