

House Bill 3646

Sponsored by Representative FREDERICK (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Authorizes proceeds of private activity revenue bonds to be used for management and operation of eligible projects.

Requires related agency, or State Treasurer, to pledge or use moneys received to subsidize borrowing costs to repay bonds for which subsidy was provided.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public borrowing; creating new provisions; amending ORS 286A.145, 289.005, 289.110,
3 289.200, 289.215 and 289.220; and declaring an emergency.

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

5 **SECTION 1.** ORS 289.005 is amended to read:

6 289.005. As used in this chapter, unless the context requires otherwise:

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

8 (2) "Bonds" or "revenue bonds" means revenue bonds, as defined in ORS 286A.001.

9 (3) "Cost" means the cost of:

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

13 (b) *[Demolishing or removing any]* **Demolition or removal of** buildings or structures on land
14 as acquired, including the cost of acquiring *[any]* lands to which *[such]* **the** buildings or structures
15 may be moved;

16 (c) All machinery and equipment;

17 (d) Financing charges, interest prior to, during and for a period after completion of construction
18 and acquisition, reasonably required amounts to make the project operational, provisions for re-
19 serves for principal and interest and for extensions, enlargements, additions, replacements, reno-
20 vations and improvements;

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

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

25 *[(f)] (g) [Such]* Other expenses *[as may be]* **that are** necessary or incident to a project, the fi-
26 nancing of *[such]* **the** project *[and]* **or** the placing of the project in operation.

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 or societies, scientific societies, wildlife conservation organizations and zoological societies. “Cul-
2 tural institution” does not mean any school or any institution primarily engaged in religious or
3 sectarian activities.

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

9 (6) “Housing institution” means a public or nonprofit organization within this state that provides
10 decent, affordable housing to low income persons.

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

14 (8) “Institution for higher education” means a public or nonprofit educational institution within
15 this state authorized by law to provide a program of education beyond the high school level, in-
16 cluding community colleges and associate degree granting institutions. “Institution for higher edu-
17 cation” does not mean any school or any institution primarily engaged in religious or sectarian
18 activities.

19 (9) “Institution for prekindergarten through grade 12 education” means an Oregon
20 prekindergarten as defined in ORS 329.170, a public educational institution within this state au-
21 thorized by law to provide a program of education for kindergarten through grade 12 or a nonprofit
22 educational institution within this state registered as a private school under ORS 345.545 that pro-
23 vides a program of education for prekindergarten through grade 12. “Institution for prekindergarten
24 through grade 12 education” does not mean a school or institution primarily engaged in religious
25 or sectarian activities.

26 (10) “Nonprofit” means an institution, organization or entity within this state exempt from tax-
27 ation under section 501(c)(3) of the Internal Revenue Code as defined in ORS 314.011.

28 (11)(a) “Project” means the financing or refinancing **of the costs**, including, without limitation,
29 acquisition, construction, enlargement, remodeling, renovation, improvement, furnishing [or] **and**
30 equipping, of the following:

31 (A) In the case of a participating institution that is an institution for higher education, an in-
32 stitution for prekindergarten through grade 12 education or a school for persons with disabilities,
33 a structure or structures suitable for use as a dormitory or other multiunit housing facility for stu-
34 dents, faculty, officers or employees, or a dining hall, student union, administration building, aca-
35 demic building, library, laboratory, research facility, classroom, athletic facility, health care facility,
36 maintenance, storage or utility facility and other structures or facilities related to any of the
37 structures required or used for the instruction of students, the conducting of research or the oper-
38 ation of an institution for higher education, an institution for prekindergarten through grade
39 education or a school for persons with disabilities. It shall also include landscaping, site preparation,
40 furniture, equipment and machinery and other similar items necessary or convenient for the opera-
41 tion of a particular facility or structure in the manner for which its use is intended and shall further
42 include any furnishings, equipment, machinery and other similar items necessary or convenient for
43 the operation of an institution of higher education, an institution for prekindergarten through grade
44 12 education or a school for persons with disabilities, whether or not such items are related to a
45 particular facility or structure financed under this chapter.

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

11 (C) In the case of a participating institution that is a cultural institution, a structure or struc-
 12 tures suitable for its purposes, whether or not to be used to provide educational services, or re-
 13 search resources, including use as or in connection with an administrative facility, aquarium,
 14 assembly hall, auditorium, botanical garden, exhibition hall, gallery, greenhouse, library, museum,
 15 scientific laboratory, theater or zoological facility. It shall also include supporting facilities, land-
 16 scaping, site preparation, furniture, equipment, machinery and other similar items necessary or
 17 convenient for the operation of a cultural institution, whether or not such items are related to a
 18 particular facility or structure financed under this chapter, including books, works of art or other
 19 items for display or exhibition.

20 (D) In the case of a participating institution that is a health care institution, a structure or
 21 structures suitable for its purposes, including hospital facilities, inpatient and outpatient clinics,
 22 doctors' offices, administration buildings, parking, maintenance, storage or utility facilities, nursing
 23 care or assisted living facilities, elderly care and housing facilities, including retirement communi-
 24 ties, and other structures or facilities related to any of the structures required or used for the op-
 25 eration of the health care institution, including other facilities or structures essential or convenient
 26 for the orderly provision of such health care. It shall also include landscaping, site preparation,
 27 furniture, equipment and machinery and other similar items necessary or convenient for the partic-
 28 ular health care facility or structure in the manner for which its use is intended and shall further
 29 include any working capital, furnishings, equipment, machinery and other similar items necessary
 30 or convenient for the provision of health care, whether or not such items are related to a particular
 31 facility or structure financed under this chapter[, *including borrowings needed to alleviate interim*
 32 *cash flow deficits of a health care institution*].

33 (E) In the case of a participating institution that is a nonprofit not otherwise specified in this
 34 subsection, a structure or structures suitable for its purposes, including facilities or structures es-
 35 sential or convenient for the orderly operations of the nonprofit. It shall also include acquisition of
 36 interests in land, landscaping, site preparation, furniture, equipment and machinery and other simi-
 37 lar items necessary or convenient for the nonprofit, whether or not the items are related to a par-
 38 ticular facility or structure financed under this chapter, including borrowings needed to alleviate
 39 interim cash flow deficits of the nonprofit.

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

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

44 (c) "Project" does not include [any] **the financing or refinancing of the costs of a facility**
 45 used or to be used for sectarian instruction or as a place of religious worship or any facility which

1 is used or to be used primarily in connection with any part of the program of a school or department
 2 of divinity for any religious denomination.

3 **(12) “Qualified program” means a financing program, or other activities, of a participat-**
 4 **ing institution that is eligible for financing through the issuance of revenue bonds the in-**
 5 **terest on which is:**

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

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

8 [(12)] **(13) “School for persons with disabilities” means a public or nonprofit primary, secondary**
 9 **or post-secondary school within this state that serves students at least 70 percent of whom are**
 10 **persons with disabilities as determined by one or more appropriate education, rehabilitation, medical**
 11 **or mental health authorities; is accredited by a recognized accrediting body; and is determined by**
 12 **the authority to be a major resource of benefit to persons with disabilities. “School for persons with**
 13 **disabilities” does not mean any school or any institution primarily engaged in religious or sectarian**
 14 **activities.**

15 **SECTION 2.** ORS 289.110 is amended to read:

16 289.110. (1) In addition to any other powers granted by law, the state, acting through the State
 17 Treasurer or a designee of the State Treasurer, may:

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

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

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

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

29 (e) Make contracts, execute instruments and do what is necessary or desirable to exercise the
 30 powers granted by this chapter, to perform the covenants or duties of this state or to secure the
 31 payment of bonds issued under this chapter. Contracts that may be made by the state include con-
 32 tracts entered into prior to construction, acquisition, [or] installation **or operation** of an eligible
 33 project that authorize, subject to terms and conditions the state finds necessary or desirable, a
 34 lessee **or other person** to provide for construction, acquisition, [or] installation, **sale or operation**
 35 of buildings, improvements, **land**, [or] equipment **or other resources** to be included in the project.

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

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

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

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

1 chapter when due; and

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

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

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

8 (3) During the term of a lease or sublease entered into under subsection (1)(b) of this section,
 9 ad valorem taxes must be imposed on the real and personal property of the eligible project in the
 10 same manner as the taxes would be imposed if the lessee or sublessee were the owner of the eligible
 11 project.

12 **SECTION 3.** ORS 289.200 is amended to read:

13 289.200. (1) If the State Treasurer determines that revenue bonds should be issued:

14 (a) The State Treasurer may authorize and issue in the name of the State of Oregon revenue
 15 bonds secured by revenues from eligible projects to finance or refinance in whole or part the cost
 16 of acquisition, purchase, construction, reconstruction, installations improvement, betterment, [or]
 17 extension, **management, operation or funding** of projects. The bonds shall be identified by project
 18 and issued in the manner prescribed by ORS chapter 286A.

19 (b) The State Treasurer shall designate the trustee, financial advisor and bond counsel, if any,
 20 and enter into appropriate agreements with each to carry out the provisions of this chapter. An
 21 agreement with bond counsel designated by the State Treasurer under this section is subject to the
 22 provisions related to services provided by bond counsel under ORS 286A.130. The powers conferred
 23 on a related agency under ORS chapter 286A do not apply to the Oregon Facilities Authority with
 24 respect to the designation of trustee, financial advisor and bond counsel.

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

27 (3) The State Treasurer [*shall be*] **is** the applicable elected representative for purposes of ap-
 28 proving the issuance of revenue bonds under this chapter [*as*] to the extent [*such*] approval is re-
 29 quired under section 147(f) of the Internal Revenue Code.

30 (4) The State Treasurer shall collect data from the authority regarding the amount and nature
 31 of bonded indebtedness in Oregon health care institutions financed through the authority.

32 **SECTION 4.** ORS 289.215 is amended to read:

33 289.215. The validity of bonds issued under this chapter [*shall not be dependent on nor be*] **is not**
 34 **dependent on or** affected by the validity or regularity of any proceeding relating to the acquisition,
 35 purchase, construction, reconstruction, installation, improvement, betterment, [or] extension, **man-**
 36 **agement, operation or funding** of the project for which the bonds are issued. The official action
 37 authorizing such bonds may provide that the bonds shall contain a recital that they are issued
 38 pursuant to this chapter and such recital shall be conclusive evidence of their validity and of the
 39 regularity of their issuance.

40 **SECTION 5.** ORS 289.220 is amended to read:

41 289.220. The official action authorizing the issuance of bonds under this chapter to finance or
 42 refinance, in whole or in part, the acquisition, purchase, construction, reconstruction, installation,
 43 improvement, betterment, [or] extension, **management, operation or funding** of [*any*] **a** project
 44 may contain covenants[, *notwithstanding that such covenants may*] **that** limit the exercises of powers
 45 conferred by this chapter in the following respects and in [*such*] other respects as the state, acting

1 through the State Treasurer, or the designee of the treasurer may decide:

2 (1) The rents to be charged for the use of properties acquired, purchased, constructed, recon-
 3 structed, installed, improved, bettered, [or] extended, **managed, operated or funded** under the au-
 4 thority of this chapter;

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

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

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

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

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

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

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

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

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

22 (11) The terms and conditions upon which any or all of the bonds shall become or may be de-
 23 clared due before maturity and the terms and conditions upon which such declaration and its con-
 24 sequences may be waived;

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

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

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

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

36 (16) The subordination of the security of any bonds issued under this chapter and the payment
 37 of principal and interest thereof, to the extent considered feasible and desirable by the state, to
 38 other bonds or obligations of the state issued to finance the eligible project or that may be out-
 39 standing when the bonds thus subordinated are issued and delivered.

40 **SECTION 6.** ORS 286A.145 is amended to read:

41 286A.145. (1) The State Treasurer or a related agency may enter into covenants for the benefit
 42 of owners of bonds that are intended to allow the bonds to bear interest that is [excludable] **ex-**
 43 **cluded** from gross income under the federal Internal Revenue Code or that is otherwise exempt from
 44 taxation by the United States. The State Treasurer or a related agency may adopt rules or proce-
 45 dures that are intended to facilitate compliance with those covenants, and may take any action that

1 is required to comply with those covenants. Covenants authorized by this [section] **subsection** in-
2 clude, but are not limited to, covenants to:

3 [(1)] (a) Pay any rebates of earnings or penalties to the United States;

4 [(2)] (b) Invest proceeds alone or in combination with other moneys in investments that have
5 different maturities, yields or credit qualities than the state would acquire under the investment
6 standards specified in ORS 293.721 and 293.726 and other similar laws, but only if those investments
7 facilitate compliance with covenants described in this [section] **subsection**; or

8 [(3)] (c) Restrict the expenditure of bond proceeds or restrict the operation of, or otherwise limit
9 the use of, facilities that are financed with bonds.

10 (2) **When a related agency, or the State Treasurer on behalf of a related agency, receives**
11 **moneys from the United States or other third party for the purpose of subsidizing the bor-**
12 **rowing costs of the State of Oregon:**

13 (a) **The related agency, or the State Treasurer on behalf of the related agency, shall de-**
14 **posit the subsidy:**

15 (A) **In the related agency's debt service reserve or other fund or account that is pledged**
16 **or used to repay the bonds for which the subsidy was provided; or**

17 (B) **In a new fund or account established in the General Fund by the State Treasurer at**
18 **the request of the related agency.**

19 (b) **The related agency shall pledge or use the moneys described in this subsection to**
20 **repay the bonds for which the subsidy was provided in the same manner as other moneys**
21 **are pledged or used to repay the bonds.**

22 **SECTION 7. (1) The amendments to ORS 289.005, 289.110, 289.200, 289.215 and 289.220 by**
23 **sections 1 to 5 of this 2010 Act apply to revenue bonds issued pursuant to ORS 289.200 on or**
24 **after the effective date of this 2010 Act.**

25 (2) **The amendments to ORS 286A.145 by section 6 of this 2010 Act apply to moneys re-**
26 **maining in a fund or account that were received to subsidize the borrowing costs of the State**
27 **of Oregon before, on or after the effective date of this 2010 Act.**

28 **SECTION 8. This 2010 Act being necessary for the immediate preservation of the public**
29 **peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect**
30 **on its passage.**

31