

Chapter 288

(Partial)

2005 EDITION

Public Borrowing and Bonds Generally

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PUBLIC BORROWING AND BONDS

**FISCAL AGENCY FOR PUBLIC
BOND PAYMENTS**

288.010 Definitions for ORS 288.010 to 288.110. As used in ORS 288.010 to 288.110, unless the context otherwise requires:

(1) "Fiscal agency" means the bank or trust company designated pursuant to ORS 288.020.

(2) "Subdivision" means a municipal corporation, quasi-municipal corporation or civil subdivision in this state. [Amended by 1987 c.869 §7]

288.020 Appointing banking institution as fiscal agency; qualifications; duration.

(1) The State Treasurer may appoint, as fiscal agency for payment of the bonds issued by this state or by any subdivision, a reputable and responsible bank or trust company. The appointment when so made shall continue for a period of two years unless sooner revoked by the State Treasurer for valid and sufficient reasons. An appointment may be renewed and when renewed shall be for a period not to exceed two years. The State Treasurer may revoke the renewal of an appointment for valid and sufficient reasons. Nothing in this subsection limits the number of times the appointment of a particular bank or trust company as fiscal agency may be renewed.

(2) Until its successor has been appointed, the bank or trust company named shall act as the fiscal agency of the State of Oregon, in accordance with such terms as shall be agreed upon between the State Treasurer and the agency. The fiscal agency shall act as custodian of such securities owned by the State of Oregon as the State Treasurer shall specify.

(3) If no such bank or trust company is willing to accept appointment as fiscal agency, or if the State Treasurer considers unsatisfactory the terms under which such a bank or trust company is willing so to act, the bonds and bond interest shall thereupon become payable at the State Treasury or at the office of the treasurer or fiscal officer of the subdivision concerned, as the case may be. [Amended by 1981 c.660 §13; 1987 c.869 §8; 1991 c.352 §4; 2003 c.16 §2]

288.030 Notice of appointment of agent; bonds and coupons payable at agency. The State Treasurer, immediately after the establishment of the fiscal agency, shall publish a notice thereof in some financial paper of general circulation in the city in which the fiscal agency is to act on behalf of the state. Thereafter all bonds and coupons of the state or one of its subdivisions which are by their terms payable in a specified city, shall be paid at the fiscal agency

appointed in that city. [Amended by 1987 c.869 §9]

288.040 Remitting funds by state and local treasurers to pay bonds and coupons. Unless otherwise provided by law, the State Treasurer and the treasurer or other fiscal officer of every affected subdivision shall remit to the fiscal agency, before the maturity of any bonds or coupons payable at the fiscal agency, sufficient moneys out of any funds in the hands of any such treasurer or other fiscal officer applicable to such purpose, for the redemption of such bonds or coupons. [Amended by 1967 c.220 §1; 1991 c.352 §5]

288.050 Notice of receipt of funds. Upon the receipt of any funds by the fiscal agency, the agency shall notify the officers from whom the funds were received that the funds have been received.

288.060 Return of canceled bonds and coupons. (1) After payment of the bonds or coupons issued by a subdivision for which the funds were remitted by the treasurer or other fiscal officer of the subdivision, the bonds or coupons shall be canceled and returned to the officer from whom the funds were received, not less often than quarterly by January 15, April 15, July 15 and October 15 of each year. At the option of the treasurer or other fiscal officer, the bonds and coupons may be held for destruction as are state bonds and coupons under ORS 288.120 and may be destroyed in the same manner as state bonds and coupons are destroyed under ORS 288.120.

(2) After payment of the bonds or coupons issued by this state for which funds were remitted by the State Treasurer, the bonds or coupons shall be canceled and held for destruction under ORS 288.120. [Amended by 1975 c.462 §3; 1981 c.252 §1]

288.070 Release of treasurers from liability for funds remitted. Neither the State Treasurer nor the treasurer or other fiscal officer of any subdivision shall be held responsible for funds remitted to the fiscal agency. The acknowledgment of the receipt of such funds, for which canceled bonds and coupons have not been returned, shall be a voucher to such treasurer in any settlement.

288.090 Postage and express costs. Postage and express costs shall be proper charges against the state or subdivision therein for which they are incurred and shall be paid to the fiscal agency and in turn be allowed the treasurer or other fiscal officer in settlement.

288.100 Certain bond issues not affected. Nothing in ORS 288.010 to 288.110 shall be construed to affect any bond issues existing on May 20, 1911, or on February 17, 1943, that by their provisions are made pay-

able at a fiscal agency in the City of New York designated before February 17, 1943. However, if desired by the holder, such bond issues and the interest thereon may be paid at the regular fiscal agency appointed in accordance with ORS 288.020.

288.110 Civil liability of treasurers failing to comply with law. If the State Treasurer or the treasurer or other fiscal officer of any subdivision neglects or refuses to perform the duties imposed by ORS 288.010 to 288.110, the State Treasurer or treasurer or other fiscal officer shall be liable to the holder of any bonds or coupons aggrieved by such neglect, in a sum, recoverable in an action at law against such treasurer and the bondsmen of such treasurer, for twice the amount of the face value of any such bonds or coupons as are dishonored on account of the neglect or refusal of such officer to comply with the provisions of ORS 288.010 to 288.110.

FORMS OF GOVERNMENTAL UNIT BORROWING

288.150 Definitions for ORS 288.150 to 288.165. As used in ORS 288.150 to 288.165:

(1) "Actual cost" has the meaning given the term under ORS 310.140.

(2) "Capital construction" has the meaning given the term under ORS 310.140.

(3) "Costs" when used with capital construction or improvements has the same meaning as "actual costs" as defined under ORS 310.140.

(4) "Credit agreement" means a note, letter of credit, line of credit or similar agreement in which a financial institution agrees to loan funds to the governmental unit, and the governmental unit pledges its full faith and credit and agrees to repay the amounts loaned over time, with or without interest.

(5) "Credit enhancement device" means a letter of credit, line of credit, municipal bond insurance policy, standby purchase agreement or other device or facility used to enhance the creditworthiness or marketability of municipal bonds.

(6) "General obligation bond" means a bond including a credit agreement that:

(a) Is a full faith and credit obligation; and

(b) Is payable from taxes that may be levied without limitation by section 11 or 11b, Article XI of the Oregon Constitution.

(7) "Governmental unit" means a unit of local government within the State of Oregon, including, but not limited to, cities, counties, school districts, special districts, public corporations and intergovernmental corpo-

rations organized under the authority of ORS 190.010.

(8) "Improvement" has the meaning given "capital improvements" under ORS 310.140.

(9) "Limited tax bond" means a bond or other obligation that:

(a) Is a full faith and credit obligation; and

(b) Is payable from taxes that the issuer may levy within the limitations of sections 11 and 11b, Article XI of the Oregon Constitution.

(10) "Related property" includes tangible personal or real property that is part of, functionally related to or used in connection with a public utility system of which the financed property is a part.

(11) "Structure" has the meaning given the term under ORS 310.140. [1991 c.902 §98; 1997 c.541 §366; 2005 c.443 §7]

288.155 When governmental unit may issue otherwise authorized general obligation bonds and limited tax bonds; priority of security interest. (1) If authorized by law other than ORS 288.150 to 288.165 and in the manner provided by law, a governmental unit may issue general obligation bonds when:

(a) The question of issuing the specific bonds has been approved by the electors of the issuing governmental unit or the bonds replace outstanding general obligation bonds pursuant to ORS 288.160; and

(b) The general obligation bonded indebtedness will be incurred for capital construction or improvements.

(2) In addition to the authority to issue limited tax bonds provided by other provisions of law, a governmental unit also is authorized to issue limited tax bonds in the following circumstances:

(a) When a governmental unit is authorized by a statute or charter to issue general obligation bonds without submitting the question of the issuance thereof to its electors, such governmental unit may exercise such statutory or charter authority to issue limited tax bonds for the same purposes and subject to the same terms and conditions of such statutory or charter authority.

(b) When the electors of a governmental unit have authorized the issuance of general obligation bonds for a particular purpose, the governing body, in its discretion and to carry out such purpose, may issue all or a portion of such bonds as limited tax bonds.

(3) Notwithstanding this section or any other provision of law requiring bonds to be authorized by ordinance, the limited tax bonds authorized by this section shall be is-

sued pursuant to a resolution or ordinance of the governing body of the issuing governmental unit.

(4) A governmental unit that has outstanding general obligation or limited tax bonds, subject to applicable covenants or agreements limiting payment of specific obligations to particular sources of funds, shall budget and appropriate amounts sufficient to pay in each succeeding annual period debt service on the bonds. However, this subsection does not require the governmental unit to adopt a supplemental budget to pay the principal and interest coming due on the general obligation or limited tax bonds in the fiscal year in which the bonds are authorized and issued. The governmental unit may pay principal and interest in the fiscal year in which the bonds are authorized and issued from any lawfully available source of funds without adopting a supplemental budget.

(5) When issuing limited tax bonds, a governmental unit may:

(a) Establish the maturity schedule, interest rates, including variable or adjustable rates of interest, redemption provisions and other terms of the limited tax bonds. Notwithstanding this subsection, the governing body, in the ordinance or resolution authorizing the issuance of the bonds or notes, may delegate to any elected or appointed official or employee of the governmental unit the authority to determine the maturity dates, principal amounts, redemption provisions, interest rates or the method of determining a variable or adjustable interest rate, denominations and other terms and conditions of the bonds that are not appropriately determined at the time of enactment of the authorizing ordinance or resolution. The authority delegated under this subsection must be exercised subject to the applicable requirements of law and the limitations and criteria set forth in the ordinance or resolution;

(b) Pledge as additional security for the limited tax bonds all or any portion of its revenues or other funds of whatever kind or nature and from whatever source derived that are not specifically restricted, under applicable law, to uses other than the payment of the amounts owing on the bonds including, but not limited to, taxes, fees or income derived from public utilities or other income-producing enterprises operated by the governmental unit, or agencies or instrumentalities thereof, or fines and penalties, and make and enter into covenants with the owners of the bonds to pay all or any portion of the amounts owing thereon out of all or any portion of the revenues or other funds;

(c) Grant mortgages, trust deeds or security interests in property that is financed

with the limited tax bonds and related property, in order to enhance the security of limited tax bonds or the obligations of the governmental unit under a related credit enhancement device;

(d) Obtain a credit enhancement device providing additional security for the payment of all or any portion of the amounts owing under the bonds or for the purpose of funding, in lieu of cash, all or any portion of any debt service reserve established with respect to the bonds. The governmental unit may pledge as security for its obligations arising under a credit enhancement device any revenues pledged to the payment of the related bonds, and the obligations are payable from the same sources from which the bonds are payable;

(e) Enter into agreements with bond trustees and deposit funds with trustees for the benefit of bond owners and the providers of credit enhancement devices for bonds;

(f) Enter into covenants for the benefit of bond owners or the providers of credit enhancement devices for bonds that are intended to improve the security of bond owners or providers of credit enhancement devices, or to maintain the tax exempt status of interest payable on bonds or credit enhancement agreements. Covenants may include, but are not limited to, covenants regarding the issuance of additional bonds and other financial obligations, the imposition and collection of any revenues that secure the bonds, and the priority of payment of bonds and other financial obligations of the governmental unit; and

(g) Establish a debt service reserve for the purpose of paying when due all amounts owing on the bonds and fund the debt service reserve with proceeds derived from the issuance and sale of the bonds or from other sources determined by the governing body of the governmental unit.

(6) A security interest granted by a governmental unit under authority of ORS 288.150 to 288.165 attaches and is perfected on the date the security interest is granted or the date the governmental unit takes possession of the property in which the security interest is granted, whichever is later. A security interest authorized by ORS 288.150 to 288.165 has priority over all other liens and claims. [1991 c.902 §99; 1993 c.97 §5; 2005 c.443 §8]

288.160 Use of refunding bond proceeds; when governmental unit may issue otherwise authorized refunding bonds. (1) Proceeds of refunding bonds authorized by this section shall be used solely to refund bonds and pay related costs and expenses, and shall not be used to pay for costs of op-

erations or costs of projects not attributable to the refunding.

(2) If authorized by law other than ORS 288.150 to 288.165 and in the manner provided by law, a governmental unit may issue general obligation bonds to refund outstanding bonded indebtedness or to reimburse the governmental unit for costs of capital construction or improvements, if:

(a) The refunding general obligation bonds have been approved by the electors in a manner that qualifies under section 11 (11)(d)(ii), Article XI of the Oregon Constitution, and the obligations which are refunded, or the first obligations in the series, if the refunding general obligation bonds are part of a series of refundings, or the costs which are to be reimbursed, were incurred for capital construction or improvements; or

(b) The refunding general obligation bonds replace an issue of outstanding general obligations bonds which were incurred for capital construction or improvements.

(3) For the purposes of this section, refunding general obligation bonds shall be deemed to replace outstanding general obligation bonds if:

(a) The refunded general obligation bonds are paid or lawfully deemed paid upon issuance of the refunding general obligation bonds; and

(b) The net proceeds of the refunding bonds shall be used to pay only the debt service on the refunded bonds and the costs of issuance of the refunding bonds; and

(c) The bond refunding satisfies at least one of the following tests:

(A) The principal amount of the refunding general obligation bonds does not exceed the outstanding principal amount of the refunded general obligation bonds, plus the amount of any authorized but unissued general obligation bonds of the governmental unit; or

(B) The total amount of principal and interest payable on the refunding general obligation bonds does not exceed the total amount of principal and interest payable on the refunded bonds as of the date of issuance of the refunding general obligation bonds; or

(C) The present value of the debt service on the refunding general obligation bonds does not exceed the present value of the debt service on the refunded general obligation bonds, with the present values calculated at the refunding bond yield.

(4) For purposes of section 11 (13) and 11b (3)(b), Article XI of the Oregon Constitution:

(a) If refunding general obligation bonds replace an issue of general obligation bonds,

the refunding general obligation bonds shall be deemed to have been issued on the date of issuance of the bonds which are replaced, or the first issue of general obligation bonds, if the refunding general obligation bonds are part of a series of refundings; and

(b) If the bonds which are replaced were approved by the electors, the refunding general obligation bonds shall be deemed to have been specifically approved by the vote which approved the bonds which are replaced, or the first issue, in a series of refundings.

(5) Notwithstanding ORS 221.200, 255.085, 287.056 or any other law to the contrary, a ballot measure authorizing issuance of refunding general obligation bonds need not state the principal amount of refunding general obligation bonds, so long as the refunding bonds comply with subsection (3) of this section. A ballot measure may authorize issuance of general obligation bonds to refund a specific series of outstanding general obligation bonds, or may authorize issuance of general obligation bonds to refund all or any portion of the outstanding bonds or future general obligation bonds, or any combination thereof.

(6) Refunded general obligation bonds shall be deemed paid within the meaning of subsection (3) of this section if:

(a) The refunded general obligation bonds are deemed paid or defeased under the provisions of the documents authorizing issuance of the refunded general obligation bonds; or

(b) The governmental unit complies with ORS 288.677.

(7) If a governmental unit issues general obligation bonds to refund general obligation bonds that were issued before December 5, 1996, the refunded general obligation bonds and the refunding general obligation bonds shall be treated as having been incurred to finance capital construction and improvements under the laws in effect at the time the refunded bonds were issued. The definitions described in section 11 (13), Article XI of the Oregon Constitution, or statutes enacted to interpret section 11 (13), Article XI of the Oregon Constitution, shall not apply to the refunded bonds or the refunding bonds.

(8) A governmental unit may issue refunding bonds to refund obligations described in section 11 (5)(a)(A) and (B), Article XI of the Oregon Constitution. Ad valorem property taxes may be levied and collected to pay refunding bonds authorized by this subsection to the same extent that ad valorem property taxes could be levied and collected to pay the obligations that are refunded.

(9) A governmental unit may issue refunding bonds to refund bonds that are not general obligations or obligations described in section 11 (5)(a)(A) and (B), Article XI of the Oregon Constitution, but are secured by ad valorem property taxes. Ad valorem property taxes may be levied and collected to pay refunding bonds authorized by this subsection to the same extent that ad valorem property taxes could be levied and collected to pay the bonds that are refunded. [1991 c.902 §100; 1995 c.333 §29; 1997 c.541 §366a]

288.162 Pledge of full faith and credit and taxing power; insufficiency of lawfully available funds; action to compel payment. (1) As used in this section:

(a) "Lawfully available funds" means revenues or other moneys of a governmental unit from whatever source derived, including but not limited to moneys credited to the governmental unit's general fund, revenues from an ad valorem tax authorized to be levied under the governmental unit's permanent rate limit under sections 11 and 11b, Article XI of the Oregon Constitution, and revenues derived from other taxes levied by the governmental unit in accordance with and subject to limitations and restrictions imposed under applicable law or contract, that are not dedicated, restricted or obligated by law or contract to an inconsistent expenditure or use.

(b) "Obligation" has the meaning given that term in ORS 288.594.

(2) When a governmental unit pledges its full faith and credit and taxing powers to the repayment of an obligation, the pledge constitutes an enforceable promise or contract by the governmental unit:

(a) To pay the obligation out of lawfully available funds of the governmental unit; and

(b) If lawfully available funds are insufficient to pay when due the amounts owing on the obligation, to levy, impose and collect a tax that is within the authority of the governmental unit to levy, impose and collect in an amount sufficient to pay the amounts owing under the obligation, including past due amounts and penalties.

(3) If a governmental unit fails to pay when due an amount owing under an obligation secured by a pledge of the full faith and credit and taxing powers of the governmental unit, the owner of the obligation, or a trustee appointed to act on behalf of the owner, may bring an action in the circuit court for the county in which the principal offices of the governmental unit are located to compel the governmental unit to:

(a) Appropriate and expend sufficient lawfully available funds to pay the amounts owing on the obligation; or

(b) If lawfully available funds are insufficient to pay when due the amounts owing on the obligation, levy, impose and collect a tax that is within the authority of the governmental unit to levy, impose and collect in an amount sufficient to pay the amounts owing under the obligation, including past due amounts and penalties.

(4) An owner of the obligation, or a trustee appointed to act on behalf of the owner, may initiate a proceeding to impose remedial sanctions under ORS 33.055 against members of a governing body for failure to comply with an order of the court under this subsection. [2003 c.195 §4]

288.165 Short-term borrowing for current expenses; form of borrowing; procedure; effect of debt limitation. (1) Subject to any applicable limitations imposed by the Constitution or laws of the State of Oregon or the charter, ordinance or resolution of a governmental unit, a governmental unit or the State of Oregon, acting through the State Treasurer pursuant to ORS 293.173, may borrow money by entering into a credit agreement, or issuing notes, warrants, short-term promissory notes, commercial paper or other obligations:

(a) In anticipation of tax revenues or other income for purposes that include, but are not limited to, the payment of current expenses;

(b) To provide interim financing for capital assets to be undertaken by the governmental unit; or

(c) To refund outstanding obligations.

(2) To secure obligations authorized under this section, a governmental unit or the State Treasurer, acting on behalf of the state, may:

(a) Pledge the anticipated tax revenues or other income, the proceeds of any bonds or other permanent financing, or any combination thereof;

(b) Segregate any pledged funds in separate accounts that may be held by the governmental unit, the State Treasurer or third parties;

(c) Enter into contracts with third parties to obtain standby lines of credit or other financial commitments designated to provide additional security for obligations authorized by this section;

(d) Establish any reserves deemed necessary for the payment of the obligations; and

(e) Adopt resolutions and enter into agreements containing covenants and provisions for protection and security of the owners of obligations, which shall constitute enforceable contracts with such owners.

(3) Obligations authorized by this section that are issued in anticipation of tax revenues or other income, except grant income, and any obligations authorized by this section that are issued to refund them may not be issued prior to the beginning of, and shall mature not later than, the end of the fiscal period in which the governmental unit or the State Treasurer expects to receive the tax revenues or other income. Obligations issued by a governmental unit or the State Treasurer in anticipation of tax revenues or other income, except grant income, may not be issued in an amount greater than 80 percent of the amount budgeted to be received in the fiscal period in which the obligations are issued.

(4) Obligations authorized by this section that are issued in anticipation of grant income or to provide interim financing for capital assets shall mature not later than five years after the obligations are issued and may be redeemed beginning not later than one year after the governmental unit or the State Treasurer expects to receive the grant or the capital asset is projected to be completed.

(5) Notwithstanding subsections (3) and (4) of this section:

(a) A school district, education service district, community college district or community college service district may issue obligations that are issued in anticipation of tax revenues or other income to mature not later than 13 months after the date the obligations were issued.

(b) A city that is incorporated on or after January 1, 1990, and is within an urban growth boundary may issue an obligation in anticipation of tax revenues or other income prior to the beginning of the fiscal period in which the city expects to receive the revenues or other income if the obligation:

(A) Matures not later than 18 months after the obligation is issued; and

(B) Is issued in an amount that does not exceed 80 percent of the amount of lawfully available funds, as defined in ORS 288.162, that the governmental unit reasonably expects to receive.

(6) Refunding obligations issued pursuant to subsection (1)(c) of this section shall mature not later than five years after the refunding obligations are issued.

(7) The debt limitations imposed by law or the charter of any governmental unit do not affect the right of any governmental unit to issue obligations under authority of this section, nor are any of the obligations to be taken into consideration in determining the percentage or extent to which the governmental unit is indebted under the debt limi-

tation. Obligations issued to refund outstanding obligations are not considered to be within any of such debt limitations.

(8) Except as provided in this section, obligations authorized by this section may be in any form and contain any terms, including provisions for redemption at the option of the owner and provisions for the varying of interest rates in accordance with any index, banker's loan rate or other standard.

(9) The governing body of an issuing governmental unit, in the ordinance or resolution authorizing the issuance of obligations under this section, may delegate to any elected or appointed official or employee of the governmental unit the authority to determine maturity dates, principal amounts, redemption provisions, interest rates or the method for determining a variable or adjustable interest rate, denominations and other terms and conditions of such obligations that are not appropriately determined at the time of enactment or adoption of the authorizing ordinance or resolution, which delegated authority shall be exercised subject to applicable requirements of law and such limitations and criteria as may be set forth in such ordinance or resolution. Except to the extent of any such delegation, the governmental unit or the State Treasurer shall determine:

(a) The maximum effective rate of interest the obligations shall bear;

(b) The manner of sale;

(c) The discount, if any, the governmental unit may allow;

(d) The terms and conditions by which the obligations may be redeemed prior to maturity;

(e) The maturities of the obligations;

(f) The form and denominations of the notes or other obligations; and

(g) All other terms and conditions related to the sale of the obligations.

(10) The governmental unit or the State Treasurer may contract with third parties to serve as issuing, paying and authenticating agents for any obligations authorized by this section.

(11) Obligations authorized by this section may be sold at public or private sale upon such terms as the governmental unit or the State Treasurer finds advantageous, with such disclosure as the governmental unit or State Treasurer deems appropriate. ORS 287.040 applies to obligations issued by governmental units under this section.

(12) As used in this section, "fiscal period" means:

(a) In the case of a governmental unit, a fiscal year.

(b) In the case of the State of Oregon, a biennium. [1991 c.902 §101; 1993 c.97 §6; 2002 s.s.1 c.1 §1; 2002 s.s.4 c.1 §4; 2003 c.195 §14; 2005 c.6 §1]

BONDS GENERALLY

288.515 Definitions for ORS 288.515 to 288.600. As used in ORS 288.515 to 288.600:

(1) "Bonds" means general obligation, revenue or tax increment bonds, notes, lease purchase, financing or loan agreements, land sale contracts or other borrowings of a public body.

(2) "Public body" means the State of Oregon, its agencies, institutions or any municipality authorized by law to issue bonds.

(3) "Municipality" means a political subdivision of this state and municipal, quasi-municipal and public corporations and intergovernmental entities organized under ORS chapter 190 authorized by law to issue bonds. [1981 c.94 §2; 1983 c.347 §1; 1991 c.583 §6; 2005 c.443 §9]

288.517 Policy concerning bond covenants. The Legislative Assembly finds and declares that:

(1) It is a matter of statewide concern that certain covenants made by public bodies regarding any pledge of revenues securing bonds or other obligations not be impaired by subsequent initiative or referendum measures.

(2) These covenants usually are in the form of a promise to charge and collect rates, fees, tolls, rentals or other charges sufficient to produce revenues to maintain a specified level of debt service coverage.

(3) Such covenants are material to the security for the bonds or other obligations and to investors' expectations regarding timely payment of the bonds or other obligations. Any possibility that such covenants might be rolled back, frozen or otherwise subjected to subsequently imposed conditions or restrictions negatively affects the ability of public bodies to market their bonds, to obtain credit enhancement and to obtain satisfactory ratings on their bonds. [1997 c.171 §2]

Note: 288.517 and 288.518 were added to and made a part of 288.515 to 288.600 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

288.518 Additional powers of municipality when issuing revenue bonds. Any municipality that is authorized to issue revenue bonds by any law other than the Uniform Revenue Bond Act, ORS 288.805 to 288.945, may, when issuing those bonds, exercise the powers specified in ORS 288.825 (3) and (4). The municipality may also pledge any revenues that such authorizing law allows the municipality to commit to pay the

revenue bonds and any amounts held as reserves for the revenue bonds. [1997 c.171 §3]

Note: See note under 288.517.

288.520 Public body to determine interest, principal amount, discount, terms; form of authority to issue; maximum interest rate for state bonds. (1) Except as provided in subsection (5) of this section, a public body issuing bonds shall determine:

(a) The maximum effective rate of interest, if any, which the bonds shall bear including variable interest rates if the public body so decides;

(b) The principal amounts, consistent with any limitations established by law, of the bonds or series of bonds to be issued;

(c) The discount or premium, if any, which the public body will allow;

(d) The terms by which the bonds may be redeemed prior to maturity, including, but not limited to, the amount of any permitted premium;

(e) The form of the bonds;

(f) The term of the bonds;

(g) The schedule for payment of bond principal and interest;

(h) The denominations of the bonds; and

(i) For revenue bonds, tax increment bonds or notes, the type of sale.

(2) When issuing general obligation bonds, the public body must sell the bonds in conformance with ORS 287.014 to 287.022.

(3) A municipality may establish a sinking fund for the purpose of repaying principal and interest when due and may covenant to make contributions to that fund.

(4) Notwithstanding any other provision of law requiring bonds to be authorized by ordinance, a public body may authorize the issuance of bonds by order or resolution of its governing body, and in the ordinance, resolution or other official authorization, a public body may delegate to any elected or appointed official or employee of the public body the authority to determine the maturity dates, principal amounts, redemption provisions, interest rates or the method for determining a variable or adjustable interest rate, denominations and other terms and conditions of the bonds that are not appropriately determined at the time of enactment of the authorizing ordinance or resolution. The delegated authority shall be exercised subject to the applicable requirements of law and any limitations and criteria set forth in the ordinance, resolution or other official authorization.

(5) When a public body issuing general obligation bonds is the State of Oregon or one of its agencies, the maximum effective

rate of interest which the bonds shall bear is 13 percent per annum. However, if an agency is unable to sell the bonds after a reasonable marketing effort, the maximum effective rate of interest may be increased but shall not exceed 14 percent per annum.

(6) Notice of any redemption authorized under subsection (1)(d) of this section shall be given in the manner directed by the public body, which shall include, if the bonds are not in registered form, publication in at least one issue of a business and financial newspaper published within the City of Portland, Oregon.

(7) Notwithstanding any other law, a public body is not required to publish a notice of redemption for bonds that are in registered form. [1981 c.94 §3; 1981 c.661 §4; 1981 c.879 §1; 1983 c.347 §2; 1985 c.441 §3; 1993 c.97 §7; 1997 c.171 §13]

288.523 Appointment of bond counsel; exception of ORS 279A.140. (1) Notwithstanding any other provision of law relating to the appointment of bond counsel, a public body may provide for the appointment of bond counsel to advise and assist the public body in the issuance of bonds or certificates of participation, including the issuance of refunding bonds and obligations, and in the lawful administration of outstanding bonds or certificates of participation. The services provided by an appointed bond counsel may include:

(a) Advising the public body concerning the legality of specific proposed taxable or tax-exempt obligations and the compliance, in substance and procedure, of those obligations with law, including but not limited to federal securities laws and regulations and federal and state tax laws and regulations;

(b) Issuing legal opinions, including opinions on the authorization, tax status and the binding effect of the obligations and their associated documents and on the lawful use of the proceeds of the obligations, as may be required by the demands of the bond market for the obligations;

(c) Advising the public body on legal procedures and practices in the bond market for the obligations, including advice on the structuring and marketing of the obligations;

(d) Preparing or assisting in the preparation of any document related to a specific issue of obligations, including but not limited to a bond authorization, bond resolution, indenture, prospectus, preliminary official statement, official statement, bond sale notice, bond form, bid form or bond purchase agreement;

(e) Advising the public body concerning the maintenance of the tax status of specific

obligations, compliance with any requirements for representations or disclosures relating to the obligations and compliance with any documents issued or executed with respect to the obligations; and

(f) Advising the public body concerning accounting and investment procedures recommended or required for compliance with tax and federal securities and rebate requirements.

(2) No appointment of bond counsel under this section shall be construed as authorizing bond counsel to advise or represent the public body on matters that are committed by statute to the Attorney General or by local law to counsel for the public body. An appointment of bond counsel by a state agency or institution shall be subject to the prior approval of the State Treasurer and the Attorney General.

(3) ORS 279A.140 does not apply to an appointment of bond counsel under this section. [1995 c.247 §2; 2001 c.536 §7; 2003 c.794 §245]

Note: 288.523 was added to and made a part of 288.515 to 288.600 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

288.525 Expenditure of bond proceeds for interest or redemption. (1) A public body may expend bond proceeds for the payment of interest on the bonds for the period established by the public body.

(2) A public body may expend bond proceeds to purchase or redeem the bonds from which proceeds are derived. [1981 c.94 §4; 1983 c.347 §3]

288.530 Deferral of initial payment of principal on bonds; determination of interest periods. A public body may defer initial payment of principal on bonds for a period of time it reasonably determines, and shall determine whether interest should be paid semiannually or otherwise. [1981 c.94 §5]

288.535 Use of seal. A public body authorized by law to possess a seal shall cause such seal to be imprinted, attached, impressed or otherwise evidenced on any bond of which it is the issuer. However, the failure to imprint, attach, impress or otherwise evidence a seal on any bond shall not affect the validity thereof. [1981 c.94 §6]

288.540 Authorized signatures. Bonds of a public body shall be executed by the signature or signatures of one or more officers as specified by the public body. Signatures of the designated officers may be either manual or facsimile, but at least one signature shall be manual in form. However, all signatures of the public body may be by facsimile if the bonds are to be authenticated by at least one manual signature. [1981 c.94 §7; 1995 c.333 §5]

288.545 Form of bonds. Bonds may be issued in coupon form, with or without privilege of registration, or may be in registered form, or both, with the privilege of converting and reconverting from one form to another, upon such terms and conditions as provided by the public body and applicable provisions of federal law. As evidence of indebtedness, the public body may utilize immobilized or book-entry delivery systems and may use depositories for these purposes. [1981 c.94 §8; 1983 c.129 §1]

288.550 Preliminary official statement not required in certain circumstances. The preliminary official statement required for general obligation bonds by ORS 287.018 shall not be required for any issue for which a commitment to purchase has been received from any state or federal agency unless such state or federal agency requires the preparation of such document. If any other purchaser is awarded the sale of general obligation bonds offered at a sale for which a commitment to purchase such bonds has been received from a state or federal agency, an official statement shall be prepared prior to the delivery of the bonds if such other purchaser so requests. [1981 c.94 §9]

288.560 Destruction of bonds and coupons. At the option of the treasurer or other fiscal officer of a subdivision making use of a paying agent other than the state's fiscal agent, bonds and coupons may be held for destruction as are state bonds and coupons under ORS 288.120 and may be destroyed in the same manner as state bonds and coupons are destroyed under ORS 288.120. [1981 c.252 §2]

288.570 Appointment of paying agents.

(1) In connection with the issuance of bonds, any municipality may appoint one or more paying agents to serve as paying agent on bonds issued after May 26, 1983.

(2) The paying agents designated under subsection (1) of this section shall either be a financial institution authorized to do business in Oregon or the state's fiscal agent as provided for in ORS 288.020.

(3) Any municipality which is required by law to use the county treasurer as paying agent may appoint a paying agent and registrar. The municipality shall provide the county treasurer written notice of such appointment no later than 20 days following the appointment.

(4) Any municipality appointing a paying agent under the authority of ORS 288.545 and 288.570 to 288.590 may:

(a) Provide for powers, duties and functions and compensation of such paying agent.

(b) Limit the liabilities of such paying agent.

(c) Prescribe a method for resignation, removal, merger or consolidation of such paying agent, appointment of a successor paying agent and transfer of right and properties to such successor paying agent.

(5) The entity through which bonds are payable shall serve as registrar under such terms and conditions as may be required by rule of the Oregon Municipal Debt Advisory Commission in effect at the time such agreement is executed.

(6) If the municipality's paying agent is the state's fiscal agent, the municipality shall also designate a coregistrar within the State of Oregon. The coregistrar may be either a financial institution authorized to do business in Oregon or a municipality. A municipality may appoint the state's fiscal agent as paying agent for bonds issued by the municipality. The municipality is not required under this section to appoint the state's fiscal agent as paying agent for all bonds issued by the municipality.

(7) Notwithstanding subsection (5) of this section, a municipality may elect to serve as its own paying agent, and in cases where the municipality so elects, it may contract with a financial institution authorized to do business in Oregon or the State of Oregon's fiscal agent to register bonds at the time of original issuance.

(8) The authority granted by ORS 288.545 and 288.570 to 288.590 is in addition to any authority to appoint a paying agent or registrar provided by statute or charter amendment. [1983 c.129 §§3,5; 1985 c.441 §4; 1993 c.97 §8]

288.580 County treasurer as paying agent. A county treasurer may enter into agreements with financial institutions to serve as paying agent and registrar, as provided in ORS 288.570 (1) to (8), for any bond issue for which the county treasurer serves as paying agent. A county treasurer may recover costs from the municipality for the service. [1983 c.129 §4; 1985 c.441 §5]

288.590 Registered bond ownership not public record. The records of registered bond ownership, whether maintained by the state or a municipality or its registrar, are not public records within the meaning of ORS 192.410 (4). [1983 c.129 §6]

288.592 Refunding bonds; rules. (1) As used in this section, "forward current refunding" means execution and delivery of a forward delivery bond purchase agreement or similar instrument under which a public body contracts to sell current refunding bonds at a specified future date.

(2) To refund outstanding bonds, a public body may issue and deliver bonds to refund all or any portion of the outstanding bonds of the public body and to execute and deliver

any contract or agreement that is necessary or desirable to currently refund or to effect a forward current refunding of bonds. The proceeds of the refunding bonds shall be used solely to pay the principal of, and interest and premium, if any, on the bonds being refunded, costs of issuing the refunding bonds plus not more than six months of interest on the refunding bonds. The proceeds of the refunding bonds shall be used to pay debt service on the refunded bonds within one year after the refunding bonds are issued.

(3) The State Treasurer may adopt rules regulating the issuance of refunding bonds and forward current refundings under this section. If the State Treasurer adopts rules, refunding bonds may not be issued and a forward current refunding agreement may not be executed under this section unless the issuance or execution complies with the rules adopted by the State Treasurer.

(4) Bonds issued to refund revenue bonds that were issued pursuant to ORS 288.815 shall be considered to have been issued in full compliance with ORS 288.815, and the issuance of the refunding bonds shall not be subject to ORS 288.815. However, a forward current refunding or the issuance of the refunding bonds must be authorized by ordinance or resolution of the issuing public body. [1987 c.91 §2; 1993 c.97 §9; 1999 c.559 §10]

288.594 Creation, perfection, priority and enforcement of lien of pledge by public body; UCC not applicable. (1) As used in this section:

(a) "Obligation" means a revenue bond, limited tax bond, general obligation bond, certificate of participation, note, lease purchase or installment purchase obligation, financing agreement, credit agreement or other contractual undertaking of a public body, however denominated, to repay borrowed moneys or to pay the purchase price of property acquired by the public body, a credit enhancement device, as the term is defined in ORS 288.805, given as additional security for an obligation described in this paragraph or an intergovernmental agreement entered into under ORS chapter 190.

(b) "Operative document" means a resolution, ordinance, trust indenture, security agreement or other document in which a public body pledges property as security for an obligation of the public body.

(c) "Pledge" means to create a security interest in or a lien on property to secure payment or performance of an obligation. The security interest or lien is created by mortgaging, assigning or encumbering property or by creating a security interest in any other manner.

(d) "Pledgee" means:

(A) A trustee for the holder of an obligation; or

(B) The holder of an obligation if a trustee was not appointed in the operative document or if the operative document authorizes the holder of an obligation to foreclose the lien of a pledge and enforce the remedies consequent to the pledge in lieu of the trustee.

(e) "Property" means real or personal property of a public body, tangible or intangible, whether owned by the public body when the pledge is made or acquired subsequently by the public body. "Property" also means revenues as that term is defined in ORS 288.805, contract rights, receivables and securities.

(2) Notwithstanding the Uniform Commercial Code, this section governs the creation, perfection, priority and enforcement of a lien of a pledge made by a public body. The Uniform Commercial Code does not apply to the creation, perfection, priority or enforcement of a lien of a pledge made by a public body.

(3) A public body may pledge all or a portion of its property as security for payment of its obligations and for performance of a covenant or agreement entered into in relation to the issuance of an obligation of the public body. The lien created by the pledge is valid and binding from the time the pledge is made. Pledged property is subject immediately to the lien of the pledge without physical delivery, filing or any other act.

(4) Except as provided otherwise expressly in the operative document, the lien of the pledge is superior to and has priority over other claims and liens of any kind.

(5) When property subject to a pledge is acquired by a public body after the pledge is made, the property is subject to the lien upon acquisition by the public body without physical delivery, filing or any other act, and the lien shall relate to the time the public body originally made the pledge.

(6) A public body may reserve the right to pledge a pledged property as security for an obligation subsequently issued by the public body. If a public body reserves that right, subject to the terms of the operative document that created the previous pledge, the lien of the subsequent pledge may be on a parity or *pari passu* basis with the lien of the previous pledge, on a prior and superior basis with the lien of the previous pledge or on a subordinate basis with the lien of the previous pledge, as specified in the operative document creating the subsequent pledge. The lien of the subsequent pledge:

(a) Has the priority specified in the operative document creating the subsequent pledge; and

(b) Is superior to and has priority over other claims and liens of any kind except the lien of a pledge with which the lien of the subsequent pledge is on a parity or subordinate basis, as specified in the operative document.

(7) Except as provided in subsection (8) of this section, a pledgee may commence an action in a court of competent jurisdiction to foreclose the lien of the pledge and exercise rights and remedies available to the pledgee under the operative document.

(8) When pledged property consists of moneys or property in a fund for debt service reserves or payments, a pledgee may foreclose the lien of the pledge by applying the moneys or property in the fund to the payment of obligations subject to the terms, conditions and limitations in the operative document.

(9) Any initiative or referendum measure approved by the electors of the public body that changes statutory or municipal charter provisions affecting rates, fees, tolls, rentals or other charges shall not be given any force or effect if to do so would impair existing covenants made with holders of existing bonds or other obligations regarding the imposition, levy or collection of the rates, fees, tolls, rentals or other charges pledged to secure outstanding bonds or other obligations.

(10) If a public body is authorized by law to pledge its revenues to secure revenue bonds or other borrowings, the public body may enter into rate covenants. Rate covenants authorized by this subsection may obligate the public body to periodically set the rates and charges:

(a) That generate the pledged revenues at specific levels including, but not limited to, a specific monetary charge for each unit of commodity or service provided or a schedule of rates and charges that includes fixed and variable components;

(b) In accordance with a formula established in the operative document governing the revenue bonds or other borrowings. The formula may provide for rates to be determined by reference to factors including, but not limited to:

- (A) Historical operating expenses;
- (B) Projected future operating expenses;
- (C) The funding of depreciation;
- (D) The costs of capital improvements;

(E) The costs of complying with contractual obligations and covenants;

(F) The costs of complying with regulatory requirements;

(G) Reports of independent consultants regarding the level of pledged revenues required to operate and maintain a utility in accordance with prudent utility practice;

(H) Debt service on the revenue bonds or other borrowings; and

(I) The funds needed to establish or maintain reserves required by law or contract and the funds needed to maintain an unencumbered carryforward fund balance or working capital to meet unanticipated expenses or fluctuations in revenues that may arise;

(c) At levels sufficient to maintain underlying credit ratings assigned to the revenue bonds and other borrowings by one or more nationally recognized credit rating services without regard to any improvement in credit ratings due to the provision of additional security for revenue bonds and other borrowings through bond insurance or credit enhancement; or

(d) That generate pledged revenues each year in amounts at least equal to operations and maintenance expenses of the system that produces the pledged revenues, plus debt service on the revenue bonds and other borrowings, plus an additional amount that is reasonably required to obtain favorable terms for the revenue bonds and other borrowings.

(11) Without regard to whether a rate covenant was entered into before or after October 23, 1999, a rate covenant authorized by this section is a contract that binds the public body making the rate covenant and is enforceable against the public body in accordance with the terms of the rate covenant. [1987 c.91 §3; 1997 c.171 §14; 1999 c.559 §5; 2001 c.537 §3]

288.596 Variable rate bonds; credit enhancement agreements. Any public body authorized to issue variable rate bonds may:

(1) Enter into letter of credit or other credit enhancement agreements in order to provide liquidity or security for bonds. Such credit enhancement agreements shall be payable solely from the same sources of funds which the public body may legally commit to pay debt service on the bonds and the public body may pledge as security for its obligations arising under or with respect to any credit enhancement agreement any revenues pledged to the payment of the related bonds or from which the bonds are payable.

(2) Issue bonds which are subject to redemption at the option of the owner. However, such right of redemption must be limited to money available under a credit enhancement agreement, proceeds of the bonds and reserves of the public body estab-

lished for such purpose. [1987 c.91 §4; 1995 c.333 §6]

288.598 Authority to pay rebates and make investments necessary for tax-exempt bond interest. Notwithstanding any other provision of law, a municipality issuing bonds, the interest on which is intended to be excludable from gross income under federal income tax laws, may:

(1) Covenant for the benefit of the owners of the bonds to pay rebates that are required under the federal income tax laws in order for interest on the bonds to be excludable from gross income. The rebates shall be considered an interest expense of the bonds, and may be paid from any source of funds which may be used to pay interest on the bonds, or from any source of funds which earns interest that is subject to rebate.

(2) Invest in United States Government securities or other legal investments which have a yield that is less than current market yield, in order to facilitate compliance with federal laws which govern whether interest on the bonds is excludable from gross income under federal income tax laws. [1987 c.840 §4]

288.600 Issuance of bonds with taxable interest authorized. A public body may issue bonds, notes or other evidences of indebtedness the interest on which is taxable for federal income tax purposes to the holders of the bonds, notes or other evidences of indebtedness. Notwithstanding the grant of such authority to a public body, a public body shall consent to such taxation expressly and in writing at the time at which the bonds, notes or other evidences of indebtedness are issued. The express written consent shall be made a part of the transcript of the proceedings of the issuance. [1987 c.840 §8]

REFUNDING BONDS

288.605 Definitions for ORS 288.605 to 288.695. As used in ORS 288.605 to 288.695, unless the context requires otherwise:

(1) "Advance refunding bonds" means bonds issued for the purpose of refunding bonds first subject to redemption or maturing one year or more from the date of the advance refunding bonds.

(2) "Bond" means any revenue bond, general obligation bond or certificate of participation.

(3) "Certificate of participation" means:

(a) Any financing agreement entered into by the State of Oregon, an agency or institution of the State of Oregon under ORS 283.085 to 283.092 or a public corporation under ORS chapter 353, or any certificate of participation issued under such financing agreement.

(b) Any financing agreement entered into by a local public body authorized by law to enter into financing agreements, or any certificate of participation issued under such financing agreements.

(4) "Financing agreement" means a lease purchase agreement, an installment sale agreement, a loan agreement or any other agreement to finance real or personal property that is or will be owned and operated by a public body, or to refinance previously executed financing agreements.

(5) "Forward current refunding" means execution and delivery of a forward delivery bond purchase agreement or similar instrument under which a public body contracts to sell current refunding bonds at a specified future date.

(6) "General obligation bond" means any bond, note, warrant, certificate of indebtedness or other obligation of a public body which constitutes an indebtedness within the meaning of the constitutional or statutory debt limitation and which is secured by the unlimited taxing power of the public body.

(7) "Governing body" means the council, commission, board or other legislative body of the public body designated in ORS 288.605 to 288.695 in which body the legislative powers of the public body are vested, provided that with respect to the state it shall mean the State Treasurer.

(8) "Government obligations" means any of the following:

(a) Direct obligations of or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America and bank certificates of deposit secured by the obligations;

(b) Bonds, debentures, notes, certificates of participation or other obligations issued by a federal agency or other instrumentality of the United States Government; or

(c) Other debt obligations determined by administrative rule of the State Treasurer or the Oregon Municipal Debt Advisory Commission to be highly secured and widely accepted in the marketplace as obligations for a defeasance escrow.

(9) "Issuer" means the public body issuing any bond or bonds.

(10) "Ordinance" means an ordinance of a public body or resolution or other instrument by which the governing body of the public body exercising any power takes formal action and adopts legislative provisions and matters of some permanency.

(11) "Public body" means the State of Oregon, its agencies, institutions, political subdivisions, municipal, quasi-municipal and public corporations and intergovernmental

entities created by intergovernmental agreements under ORS chapter 190 authorized by law to issue general obligation bonds or revenue bonds or to enter into financing agreements and cause certificates of participation to be issued under such financing agreements.

(12) "Revenue bond" means any bond, note, warrant, certificate of indebtedness or other obligation for the payment of money issued by a public body or any predecessor of any public body and which is payable from designated revenues or a special fund but excluding any obligation constituting an indebtedness within the meaning of the constitutional or statutory debt limitations and any obligation payable solely from special assessments or special assessments and a guaranty fund.

(13) "Special revenue bond" means any bond, note, warrant, certificate of indebtedness or other obligation for the payment of money issued by a public body or any predecessor of any public body which is payable from designated revenues or a special fund and which is subject to statutory debt limitations. [1977 c.536 §3; 1997 c.820 §1; 1999 c.559 §11; 2005 c.443 §10]

288.610 Legislative findings; applicability of ORS 288.605 to 288.695. (1) The Legislative Assembly finds that:

(a) It is desirable to afford public bodies the authority to reduce the costs on their outstanding bonds, thereby resulting in a savings in the costs of capital expenditures of a public body; that such a savings is for the benefit of the people of the state;

(b) Legislation permitting a public body to pay and discharge all or any part of outstanding bonds in arrears, or about to become due and for which sufficient funds are not available, or to effect a reorganization of its permanent debt, or to effect a savings is desirable to protect the credit of the state and its public bodies; and

(c) To determine the extent of the need to issue advance refunding bonds or to effect a forward current refunding and to insure that issuance of such bonds is to the advantage of and in the best interests of and for the general welfare of the state and all public bodies, it is desirable that the State Treasurer approve of the issuance of all such bonds.

(2) The Legislative Assembly declares that the issuance of advance refunding bonds and the authority to effect a forward current refunding are matters of general statewide concern and ORS 288.605 to 288.695 preempt all statutory or charter authority to issue advance refunding bonds or to effect a forward current refunding, except that ORS

288.605 to 288.695 are not applicable to nor shall it affect advance refunding bonds issued prior to October 4, 1977. [1977 c.536 §2; 1999 c.559 §12]

288.615 Power to issue advance refunding bonds; allowable purposes. (1) Subject to subsections (3) and (4) of this section, the governing body of any public body may by ordinance provide for the issuance of bonds without an election to refund outstanding bonds, including advance refunding bonds heretofore or hereafter issued by the public body or its predecessor, or to fund the obligations of the public body under any contract, lease, sublease or agreement entered into with the Oregon Mass Transportation Financing Authority pursuant to ORS 267.227 and 391.500 to 391.660, and to pay redemption or prepayment premiums and costs of issuance, only in order:

(a) To pay or discharge all or any part of such outstanding obligations or series or issue of bonds, including any interest thereon, in arrears or about to become due and for which sufficient funds are not available;

(b) To effect a favorable reorganization of the permanent debt structure of the issuer; or

(c) To effect a savings discounted to present value to the public body or in the event of industrial development bonds, to effect a savings discounted to present value to the principal obligor of the revenue bonds.

(2) When issuing refunding revenue bonds or advance refunding revenue bonds to refund revenue bonds that were issued in accordance with ORS 288.815, a municipality, as defined by ORS 288.805 (3), is not required to comply with the procedures prescribed in ORS 288.815 in issuing bonds pursuant to this section.

(3) To determine whether or not a saving will be effected, consideration shall be given to the interest to fixed maturities of the refunding bonds and the bonds or obligations to be refunded, the costs of issuance of the refunding bonds, the redemption or prepayment premiums, if any, to be paid and the known earned income from the investment of the refunding bond proceeds pending redemption or prepayment of the bonds or obligations to be refunded.

(4) The refunding plan shall be subject to provisions concerning payment and to all other contractual provisions in the proceedings authorizing the issuance of the bonds or obligations to be refunded or otherwise appertaining thereto and to the review and authorization of the State Treasurer.

(5) For purposes of ORS 288.605 to 288.690, wherever reference is made to "the

bonds or obligations to be refunded” or any words of similar import, such reference shall include the following:

(a) In the case of an advance refunding of general obligation bonds, limited tax bonds, as defined in ORS 288.150, revenue bonds or certificates of participation, the general obligation, limited tax or revenue bonds or the certificates of participation to be refunded; or

(b) In the case of a funding of the obligations of a mass transit district under any contract, lease, sublease or agreement entered into with the Oregon Mass Transportation Financing Authority under ORS 267.227 and 391.500 to 391.660, both the obligations of the mass transit district under such contract, lease, sublease or agreement and the revenue bonds issued by the Oregon Mass Transportation Financing Authority under ORS 391.500 to 391.660 which are secured by such contract, lease, sublease or agreement.

(6) Subject to ORS 288.605 to 288.690, a mass transit district may exercise the powers conferred upon public bodies under this section and ORS 288.637 and issue advance refunding bonds for the purpose of refunding the obligations of such mass transit district under any contract, lease, sublease or agreement with the Oregon Mass Transportation Financing Authority under ORS 267.227 and 391.500 to 391.660, in which event such advance refunding bonds shall, for purposes of ORS 288.605 to 288.690, be deemed to be issued for the purpose of the advance refunding of revenue bonds.

(7) A financing agreement may be used to refund outstanding financing agreements or certificates of participation under this section. If the obligation to be refunded is a financing agreement or a certificate of participation, then the advance refunding obligation, without regard to the type of obligation, may be secured by the same claims against the public body that secure the financing agreement or certificate of participation to be refunded. [1977 c.536 §4; 1985 c.429 §3; 1993 c.97 §10; 1997 c.820 §2]

288.620 Review and approval by State Treasurer; expenses. (1) Refunding bonds may not be issued under ORS 288.605 to 288.695 unless authorized by the State Treasurer under this section.

(2) Following adoption of an ordinance or resolution approving a refunding plan to issue advance refunding bonds, the refunding plan shall be submitted to the State Treasurer for review and approval.

(3) Following adoption of an ordinance or resolution approving a refunding plan to effect a forward current refunding, the refund-

ing plan must be submitted to the State Treasurer for review and approval if the State Treasurer has adopted rules under ORS 288.592 related to forward current refunding bonds.

(4) After review of a proposed refunding plan, the State Treasurer shall advise the public body, in writing, whether the sale of refunding bonds is authorized. Failure of the State Treasurer to notify the public body within 30 business days after receipt of the refunding plan shall be deemed an authorization to proceed. Except as provided in ORS 288.625, in making determinations under this section the State Treasurer shall consider all relevant factors, including the purposes for which the refunding plan is adopted, the terms of the refunding plan, the effects (if any) of applicable federal laws and the views of recognized experts in the field.

(5) The State Treasurer may delegate the authority to approve refunding plans, including approval of the investment of the refunding bond proceeds, to the Oregon Municipal Debt Advisory Commission.

(6) The administrative expenses of the State Treasurer incurred in reviewing refunding plans shall be charged against the bond proceeds or may be paid by the public body from such other funds as may be available. [1977 c.536 §17; 1989 c.435 §1; 1999 c.559 §13; 2001 c.47 §1]

288.625 Manner of issuance. Advance refunding bonds may be issued or a forward current refunding may be effected for general obligation, revenue or special revenue bonds, at the discretion of the governing body, in the manner provided in ORS 287.016 to 287.022. [1977 c.536 §5; 1987 c.840 §2; 1999 c.44 §20; 1999 c.559 §14]

288.630 Oregon Municipal Debt Advisory Commission assistance. Any governing body refunding bonds under ORS 288.605 to 288.695 may seek assistance on matters pertaining to the issuance of the refunding bonds or a forward current refunding from the Oregon Municipal Debt Advisory Commission pursuant to ORS 287.020 and 287.034. [1977 c.536 §6; 1999 c.559 §15]

288.635 Bonds to be refunded; time of redemption. (1) Bonds may be refunded under ORS 288.605 to 288.695 when the holders of the bonds to be refunded voluntarily surrender them for exchange or payment or if they mature or are subject to redemption prior to maturity of the refunding bonds.

(2) In any advance refunding plan created pursuant to ORS 288.605 to 288.695, the governing body shall provide, irrevocably in the ordinance authorizing the issuance of the advance refunding bonds, for the redemption of the bonds to be refunded not later than six

months from the date they are first subject to redemption. [1977 c.536 §7]

288.637 Early redemption; advance refunding; forward current refunding. (1) Notwithstanding any other provision of ORS 288.605 to 288.695:

(a) The governing body may permit redemption of bonds to be refunded at maturity or any earlier time and permit advance refunding of bonds or a forward current refunding of bonds which are not callable prior to maturity notwithstanding the conditions and requirements of ORS 288.635.

(b) The governing body may permit advance refunding of advance refunding bonds or may effect a forward current refunding notwithstanding the conditions and requirements of ORS 288.635.

(2) The governing body shall determine whether each proposed redemption, advance refunding or forward current refunding under subsection (1) of this section furthers the policies expressed in ORS 288.610 and 288.615. If the governing body determines that the redemption, advance refunding or forward current refunding furthers such policies, the governing body may proceed with the redemption, advance refunding or forward current refunding authorized by this section. [1985 c.429 §2; 1993 c.97 §23; 1999 c.559 §16]

288.640 Redemption of advance refunding bonds. The ordinance or other official action authorizing the issuance of advance refunding bonds pursuant to ORS 288.605 to 288.695 may contain any redemption terms deemed advisable in the discretion of the governing body or its designee. [1977 c.536 §8; 1993 c.97 §24; 1995 c.333 §7]

288.645 Limit on advance refunding amount. (1) Advance refunding bonds may not be issued in a principal amount in excess of the minimum principal amount estimated to be necessary:

(a) To purchase a principal amount of government securities that is, together with the interest earnings thereon, sufficient to pay all installments of principal, interest and redemption premiums, if any, on the bonds being refunded when they fall due in accordance with the advance refunding plan; and

(b) To pay any amounts charged to the issuer as administrative costs, expenses or fees, in connection with the advance refunding transaction, that can be paid from the proceeds of the advance refunding bond issue.

(2) If the issuer of advance refunding bonds receives an amount of proceeds that exceeds the actual amount required under subsection (1) of this section, the excess amount of proceeds must be used to pay in-

terest on the advance refunding bonds. [1977 c.536 §9; 2005 c.443 §11]

288.650 Investment of proceeds; approval by State Treasurer. Prior to the application of the proceeds derived from the sale of advance refunding bonds to the purposes for which the refunding bonds have been issued, the advance refunding bond proceeds, together with any other funds the governing body may set aside for the payment of the bonds to be refunded, may be invested and reinvested only in government obligations. Investment shall take place at a time or at times as may be required to provide funds sufficient to pay principal, interest and redemption premiums, if any, in accordance with the advance refunding plan. To the extent incidental expenses have been capitalized, the advance refunding bond proceeds may be used to defray such expenses. The governmental obligations used for investment and reinvestment of advance refunding bonds shall be approved by the State Treasurer in accordance with ORS 288.620. [1977 c.536 §10]

288.655 Tax levies. (1) Notwithstanding any other provision of law, no governing body shall cause to be levied upon the taxable property within its district a tax to pay the maturing interest and principal on any bond or bonds being refunded pursuant to ORS 288.605 to 288.695, if the amount owed on the bonds being refunded is secured by the investment of the advance refunding bond proceeds together with any other funds the governing body may set aside for the payment of the bonds to be refunded.

(2) Subject to ORS 288.665, each governing body, where applicable, shall annually cause to be levied upon the taxable property within its boundaries a sum sufficient, with other revenues that are available, to pay the maturing interest and principal of all advance refunding bonds that are general obligation bonds and, within constitutional and statutory limitations, a sum sufficient, with other revenues that are available, to pay the maturing interest and principal of all limited tax bonds, as defined in ORS 288.150. [1977 c.536 §11; 1997 c.820 §3]

288.660 Trustee; use of proceeds; additional pledges. (1) The governing body may contract with respect to the safekeeping and application of the advance refunding bond proceeds and other funds included therewith and the income therefrom including the right to appoint a trustee which may be any trust company or state or national bank having powers of a trust company within the State of Oregon.

(2) The governing body may provide in the refunding plan that until such moneys are required to redeem, retire or pay interest

and principal installments on the general obligation or revenue bonds to be refunded, the refunding bond proceeds and other funds and the income from the advance refunding bond proceeds shall be used to pay and secure the payment of the principal of and the interest on the advance refunding bonds.

(3) For the payment of revenue refunding bonds, the governing body may pledge, or otherwise make the bonds payable from, any revenues which might legally be pledged for the payment of revenue bonds of the issuer of the type being refunded.

(4) Provisions shall be made by the governing body for moneys sufficient in amount to accomplish the refunding as scheduled. [1977 c.536 §12; 1993 c.97 §11]

288.665 Advance refunding of revenue bonds; conditions. (1) Subject to subsection (2) of this section, when a public body has irrevocably set aside for and pledged to the payments of revenue bonds to be refunded advance refunding bond proceeds and other moneys in amounts which together with known earned income from the investment of the advance refunding bond proceeds are sufficient in amount to pay the principal of and interest and any redemption premiums on such revenue bonds as the same become due and to accomplish the refunding as scheduled, the governing body may provide that the advance refunding revenue bonds shall be payable from any source which, at the time of the issuance of either the advance refunding bonds or the revenue bonds to be refunded, might legally either be or have been designated as a source from which the advance refunding revenue bonds shall be payable or be or have been pledged for the payment of the revenue bonds refunded to the extent it may legally do so, notwithstanding the designation or pledge of such revenues for the payment of the outstanding revenue bonds being refunded.

(2) The power granted to a public body under subsection (1) of this section shall be exercised only to the extent that all provisions of law and all other contractual provisions in the proceeding authorizing the issuance of the bonds to be refunded are respected. [1977 c.536 §13; 1993 c.97 §12]

288.670 Refunding of certain general obligation bonds; conditions. (1) Except for advance refunding bonds sold pursuant to ORS 288.615 (1)(a), the maturity dates of general obligation bonds issued to refund voted general obligation bonds may not be more than 30 days after the maturity dates of the bonds to be refunded. However, as long as the total debt service on the refunding bonds does not exceed the total debt service on the bonds to be refunded, the

amounts maturing on any given date may be changed, and the refunding general obligation bonds may mature earlier than the bonds to be refunded.

(2) Subsection (1) of this section does not apply to general obligation bonds of the State of Oregon. [1977 c.536 §14; 1983 c.798 §9; 2001 c.47 §2]

288.675 Amounts credited to bond retirement not indebtedness. In computing indebtedness for the purpose of any constitutional or statutory debt limitation there shall be deducted from the amount of outstanding indebtedness the amounts of money and investments credited to or on deposit for general obligation or special revenue bond retirement. [1977 c.536 §15]

288.677 Amount credited to escrow account not indebtedness. If a public body causes government obligations to be placed irrevocably in escrow in an amount calculated to be sufficient to pay principal and interest on outstanding bonds issued by the body as they mature or have been irrevocably called for prior redemption, in accordance with rules established by the State Treasurer, the amounts of money and investments credited to or on deposit for the payment of such outstanding bonds shall be deducted from the amount of outstanding indebtedness in computing indebtedness for the purpose of any constitutional or statutory debt limitation. Bonds for which government obligations have been so deposited irrevocably in escrow shall be deemed to be defeased to the same extent as if such bonds had been advance refunded pursuant to the provisions of ORS 288.605 to 288.690. [1983 c.347 §5]

288.680 Issuance of refunding bonds with other bonds. Bonds for refunding and bonds for any other purpose or purposes authorized may be issued separately or issued in combination in one or more series or issued by the same issuer. [1977 c.536 §16]

288.685 Rules. The State Treasurer shall adopt such rules as are necessary to carry out the purposes of ORS 288.605 to 288.695, provided that the rules shall as a minimum conform to all applicable laws and regulations thereunder of the United States that pertain to advance refunding. The rules may be changed from time to time as the State Treasurer considers necessary. [1977 c.536 §19]

288.690 Severability. If any provision of ORS 288.605 to 288.695, or its application to any person or circumstances is held invalid, the remainder of ORS 288.605 to 288.695, or the application of the provision to other persons or circumstances is not affected. [1977 c.536 §18]

288.695 Short title. ORS 288.605 to financing and Refunding Bond Act of 1977.
288.695 may be cited as the Advance Refi- [1977 c.536 §1]

PUBLIC BORROWING AND BONDS
