

Senate Bill 530

Sponsored by Senator BOQUIST (at the request of Oregon Shipping Group) (Pre-session 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**.

Establishes Oregon Shipping Authority as independent public corporation and prescribes authority's purpose, mission and powers.

Provides for county commissioners in each of 12 regions of state to appoint director that represents region to authority's board of directors.

Directs Port of Portland to transfer right, title, ownership and interest in Terminal 6 in Portland to authority.

Specifies duties of authority with respect to authority's employees.

Permits authority to sell revenue bonds and enter into financing agreements.

Subjects authority to annual audit by Secretary of State and requires authority to respond to recommendations in audit report.

Directs authority to establish grant program to enhance maritime shipping facilities at ports within state.

Becomes operative January 1, 2018.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to enhancing trade in goods; creating new provisions; amending ORS 287A.001; and de-
3 claring an emergency.

4 The Legislative Assembly finds that:

5 (1) Oregon has unique geographic qualities that give the state great capabilities for providing
6 shipping services for domestic and international trade via ship, barge, rail, truck and air transpor-
7 tation. These qualities include, but are not limited to, a capability for deep-water port facilities in
8 areas such as Astoria and Warrenton, Coos Bay, Newport and St. Helens and existing port facilities
9 that are suitable for use in world maritime trade in the ports of Umatilla, Morrow, Arlington, The
10 Dalles, Hood River, Cascade Locks and Portland.

11 (2) Oregon is a conduit for exporting and importing goods and has the potential to greatly ex-
12 pand the state's import and export capabilities with increased development of the state's port and
13 transportation facilities, including truck and rail transload facilities. The state should take a strong
14 role in fostering this development.

15 (3) Manufacturing and agricultural production are major elements of Oregon's economy and de-
16 pend heavily on reliable, economic, swift, safe and environmentally sound shipping facilities.

17 (4) Oregon prepared a comprehensive freight shipping plan in 2011. The plan must be updated
18 and revised annually to address changes that have occurred since 2011 and to present a vision for
19 the future.

20 (5) Although some shipping facilities and programs depend on federal government support, pri-
21 vate sector resources and support, along with state and local government resources and support, can
22 successfully implement and maintain shipping facilities and programs.

23 (6) Oregon must develop and improve maritime deep-water ports with container facilities and
24 terminals and associated railway and highway facilities, especially in areas such as Astoria and

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 Warrenton, Coos Bay, Newport and St. Helens. Oregon also must develop and improve many other
 2 river and sea ports with special capabilities related to the needs of the region, the nation and world
 3 trade. These ports include Umatilla, Morrow, Arlington, The Dalles, Hood River, Cascade Locks and
 4 Portland. Existing port infrastructure is an important asset and serves as a base for improvement
 5 and development. Accordingly, all ports and nonport shipping facilities such as transload facilities
 6 should receive statewide support and encouragement.

7 (7) The container terminal at the Port of Portland that is commonly known as Terminal 6 was
 8 developed and constructed with major taxpayer support and has existing facilities that can provide
 9 extensive current shipping capability for medium and small container ships. The Columbia River
 10 channel was deepened, at considerable taxpayer expense, to accommodate such shipping.

11 (8) An efficient, cost-effective, swift, reliable, safe and environmentally sound container shipping
 12 system can be implemented promptly at Terminal 6, provided that labor and management issues are
 13 eliminated. Oregon's economy, and the economy of the region, will be boosted significantly by rees-
 14 tablishing and developing container shipping at Terminal 6. Handling the movement of containers
 15 into, through and out of Terminal 6 is a critical transportation function at a state-owned facility that
 16 is best carried out by public employees who are subject to appropriate standards of performance.

17 (9) The Port of Portland is a state-owned port that is subject to state control. The port in 2010
 18 relinquished control of Terminal 6 under a lease to a private company. The lease arrangement has
 19 not been successful and must be revisited.

20 (10) Oregon needs an Oregon Shipping Authority that can provide leadership and support in
 21 establishing, maintaining and developing a comprehensive shipping and transportation system that
 22 will meet the needs of the economy and people of Oregon and the northwest region. The authority
 23 must be empowered to support reforms and improvements in Oregon's transportation system that
 24 are designed to protect and enhance the capability of Oregon businesses to ship freight econom-
 25 ically, safely and in an environmentally sound manner. This empowerment must include the ability
 26 to focus on swiftly restoring and growing excellent container shipping facilities at Terminal 6 and
 27 the ability to support the development and enhancement of all necessary shipping facilities
 28 throughout the state, with particular emphasis on ship, rail, barge, truck and air freight facilities.

29 (11) For the foregoing reasons, the Legislative Assembly finds that the Oregon Trade and Ship-
 30 ping Development Act is necessary.

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

32 **SECTION 1. As used in sections 1 to 22 of this 2017 Act:**

33 (1) "Public corporation" means an entity that the State of Oregon creates to carry out
 34 a public purpose by participating in activities in which a private enterprise may also partic-
 35 ipate in the course of the private enterprise's business.

36 (2) "Terminal 6" means the container shipping facilities that the Port of Portland owns
 37 and designates as Terminal 6 in maps and documents that the port produces, including all
 38 real and personal property included within the designation that the port leases to another
 39 person.

40 **SECTION 2. (1)(a) The Oregon Shipping Authority is established as an independent public**
 41 **corporation with the purposes and powers set forth in section 3 of this 2017 Act.**

42 (b) The intent of sections 1 to 22 of this 2017 Act is that:

43 (A) The authority has, as a public corporation, the operating flexibility necessary to en-
 44 sure success while remaining subject to principles of public accountability and fundamental
 45 public policy; and

1 (B) Although public officials appoint the authority’s board of directors, the board of di-
 2 rectors has the power to set the authority’s policies and manage the authority’s operations.

3 (2)(a) A board of directors with 12 members shall govern the authority. The county
 4 commissioners in each region specified in paragraph (c) of this subsection, by majority vote
 5 of all of the county commissioners in the region, shall appoint a director to represent the
 6 region.

7 (b) A majority of the county commissioners in the same region that a director represents
 8 on the board of directors may remove the director for cause by majority vote after providing
 9 notice and a public hearing.

10 (c) Each director on the authority’s board of directors represents a region that consists
 11 of one or more counties of this state. The regions are:

<u>Region</u>	<u>Counties</u>
16 1	Multnomah
17 2	Washington
18 3	Clackamas and Hood River
19 4	Clatsop, Columbia, 20 Tillamook and Yamhill
21 5	Lincoln, Polk 22 and Benton
23 6	Marion and Linn
24 7	Lane
25 8	Coos and Douglas
26 9	Curry, Josephine 27 and Jackson
28 10	Klamath, Lake, 29 Harney, Malheur, 30 Deschutes and Crook
31 11	Wasco, Sherman, 32 Gilliam, Morrow, 33 Jefferson and Wheeler
34 12	Umatilla, Union, 35 Wallowa, Grant 36 and Baker

37
 38
 39 (d) If a port is located within a region described in paragraph (c) of this subsection, the
 40 county commissioners in the region shall obtain from the port commissioners of the port a
 41 recommendation for a candidate or candidates before appointing a director to the authority.
 42 A recommendation under this paragraph is a public record, but the custodian of the record
 43 shall redact from the record the substance of a port commissioner’s opinions and recom-
 44 mendations before disclosing the record, unless the port commissioner consents to a disclo-
 45 sure without the redaction.

1 (e) A director must be a resident of this state and a citizen of the United States and must
2 have at least three years of experience in maritime, rail or truck shipping, international
3 trade or importing and exporting goods.

4 (f) A director may not be a county commissioner or a member of the Legislative As-
5 sembly and may not be an employee of the authority.

6 (3)(a) A director's term of office is four years. The county commissioners in each region
7 by majority vote shall appoint a successor to represent the region before a director's term
8 expires or a replacement for the remainder of a director's term of office if the director's
9 position is vacant for any reason. A director is eligible for reappointment but may not serve
10 for more than two terms. The appointment of a successor or replacement is immediately
11 effective.

12 (b) A director is entitled to compensation and expenses as provided in ORS 292.495.

13 (c)(A) Except as provided in subparagraph (B) of this paragraph, a director of the au-
14 thority may not have any pecuniary interest, other than an incidental interest that the di-
15 rector discloses and makes a matter of public record at the time the county commissioners
16 in a region appoint the director, in any business entity other than the authority that, during
17 the director's term of office, will likely benefit, financially or otherwise, from the authority's
18 operations.

19 (B) A director may have a pecuniary interest in a business entity that might benefit in
20 particular circumstances from the operations of the authority if the director discloses the
21 interest to the authority's board of directors and offers to refrain from participating in a
22 decision of the board of directors that might benefit the business entity in which the director
23 has the interest. Unless the authority's bylaws provide otherwise, the board of directors shall
24 exclude the director that disclosed the interest from participating in the decision.

25 (4) The board of directors shall select one director as chairperson and another director
26 as vice chairperson for terms and with duties and powers the board of directors considers
27 necessary to perform the functions of chairperson and vice chairperson.

28 (5) The board of directors shall meet at least once every two months at a time and place
29 the board of directors designates or at other times and places that the chairperson or a
30 majority of the board of directors specifies.

31 (6) The board of directors shall adopt bylaws and policies for operating and managing the
32 authority that are consistent with applicable provisions of law.

33 (7) The board of directors shall appoint a president and officers that the board deems
34 necessary to administer and manage the authority. The president shall administer and
35 manage the authority's affairs subject to the board's oversight and supervision.

36 **SECTION 3.** (1)(a) The Oregon Shipping Authority is a governmental entity that performs
37 governmental functions and exercises governmental powers, but does not have territorial
38 boundaries within this state and is not a unit of local or municipal government or a state
39 agency for the purposes of state statutes or constitutional provisions. The authority shall
40 carry out the purposes set forth in subsection (2) of this section and has the powers, rights
41 and privileges that sections 1 to 22 of this 2017 Act expressly confer on the authority or that
42 are otherwise implied by law or are incident to expressly conferred powers, rights and priv-
43 ileges.

44 (b) The authority shall incorporate as a nonprofit corporation. Except to the extent set
45 forth in sections 1 to 22 of this 2017 Act, the authority is subject to ORS chapter 65 with

1 respect to the authority's formation, governance, operation and dissolution and as to all
2 other matters to which a nonprofit corporation would otherwise be subject. To the extent
3 that a provision of sections 1 to 22 of this 2017 Act conflicts with a provision of ORS chapter
4 65, the provisions of sections 1 to 22 of this 2017 Act control the operations of the authority
5 and supersede the provisions of ORS chapter 65.

6 (2) The purposes of the authority are to:

7 (a) Ensure shipping capability and services that allow the state to engage fully in im-
8 porting, transporting and exporting goods in an efficient and cost-effective manner, with
9 consideration of safety and environmental concerns;

10 (b) Reestablish, enhance and improve the frequency and volume of maritime container
11 shipping services at Terminal 6;

12 (c) Negotiate, renegotiate and enter into lease arrangements with respect to Terminal 6
13 that improve delivery of efficient and cost-effective operations;

14 (d) Ensure that shipping channels in the Columbia River are deep enough for maritime
15 shipping vessels to use;

16 (e) Advocate for statutes and rules that improve trucking, shipping, insurance and other
17 necessary aspects of freight transportation in a safe and cost-effective manner;

18 (f) Conduct studies concerning, and advocate for, repairs and improvements to trans-
19 portation infrastructure such as transload facilities for truck and rail transportation,
20 short-line railroads, connections between short-line and long-line railroads and other facili-
21 ties that enhance freight transportation within this state in a safe and cost-effective manner;

22 (g) Conduct studies and advocate for developing and maintaining additional shipping ter-
23 minals at ports within this state; and

24 (h) Develop a statewide freight transportation plan that includes measures to develop,
25 maintain and expand existing facilities and systems for shipping freight into, out of and
26 within this state.

27 (3) In order to carry out the purposes set forth in subsection (2) of this section, the au-
28 thority has the power to:

29 (a) Acquire, purchase, receive, hold, own, control, lease, rent, manage, operate, use, im-
30 prove, develop, construct, equip, furnish, lend, sell, convey, exchange or otherwise dispose
31 of real property, personal property and intellectual property of any description or nature;

32 (b) Make available by lease or other agreement, or control access to, any property, fa-
33 cility, asset or service the authority owns, controls or holds, under terms the board deems
34 appropriate, impose and collect any fee or charge the board deems reasonable for using the
35 property, facility, asset or service and terminate or deny access to the property, facility,
36 asset or service in accordance with the terms of the lease or agreement or as the board
37 otherwise deems appropriate;

38 (c) Exercise the right of eminent domain in the state's name and in accordance with ORS
39 chapter 35 under circumstances that the authority justifies in writing to all affected persons
40 with specific reference to an aspect of the authority's mission;

41 (d) Enter into and fully participate in operating partnerships, joint ventures or other
42 business arrangements with any public or private entity;

43 (e) Form or acquire subsidiary entities that, in the judgment of the board of directors,
44 enable the authority to effectively carry out the purposes set forth in this section;

45 (f) Purchase, receive, subscribe for or otherwise acquire, hold, own, vote, use, sell,

1 mortgage, lend, pledge, invest in, deal in or otherwise dispose of shares of stock or other
2 equity in, debt or other obligations of or other interests in any other entity, using any fund,
3 account or subaccount;

4 (g) Enter into contracts and other agreements with entities or individuals with appro-
5 priate experience, expertise, capacity and knowledge of shipping and freight transportation
6 and related infrastructure operation, management, maintenance, repair and service to oper-
7 ate or manage on the authority's behalf any department, section, division or other element
8 of the authority, property that the authority owns, leases or controls, or to perform any duty
9 or function the authority performs, including but not limited to clerical, administrative, ac-
10 counting and other functions;

11 (h) Contract or otherwise agree with a state agency to perform any of the authority's
12 duties or functions or exercise any of the authority's powers at a level of compensation that
13 does not exceed the state agency's actual cost of performing the duty or function or exer-
14 cising the power;

15 (i) Employ, fix compensation for, discipline, dismiss and set employment conditions,
16 privileges and terms in accordance with applicable law for any individual whom the authority
17 deems necessary to enable the authority to effectively carry out the purposes set forth in
18 this section, except that the authority may not administer or require a political or sectarian
19 test as a condition of employment;

20 (j) Offer to employees of the authority a retirement program that is an alternative to or
21 that is in addition to the Public Employees Retirement System, notwithstanding the pro-
22 visions of ORS chapters 238 and 238A;

23 (k) Sue in the authority's own name any public or private entity, or be sued in the
24 authority's own name by any public or private entity, in any local, state or federal forum;

25 (L) Solicit and receive gifts and donations of money or property of any description from
26 any source for the authority's benefit and, subject to the terms of the gift or donation, re-
27 tain, invest and use the gift or donation, provided that the gift or donation does not inure
28 to the benefit of any director, officer, employee or agent of the authority or to any other
29 individual;

30 (m) Acquire, receive, hold, keep, pledge, control, manage, use, lend, expend and invest
31 all funds, appropriations, gifts, bequests, securities and revenue that the authority obtains
32 from any source;

33 (n) Borrow money in amounts, for times and on terms that the authority's board of di-
34 rectors deems appropriate;

35 (o) Issue bonds or other debt instruments in the name of the State of Oregon with the
36 cooperation and under the supervision of the State Treasurer and in accordance with ORS
37 chapter 289 and other applicable law;

38 (p) Purchase insurance, operate a self-insurance program or otherwise arrange for
39 equivalent insurance of any nature;

40 (q) Indemnify and defend the authority's directors, officers, agents, employees or other
41 individuals that the authority designates to carry out the authority's purpose;

42 (r) Establish, charge, collect, enforce, recover and use fees for services and facilities the
43 authority provides or fines to penalize or prevent illegal activity that hinders freight traffic
44 into and out of Terminal 6;

45 (s) Consult and cooperate, or otherwise interact, with any government agency, including

1 the Federal Maritime Commission, the United States Coast Guard and the United States
2 Army Corps of Engineers;

3 (t) Adopt, amend and repeal bylaws and policies and otherwise administer and manage
4 the authority's affairs;

5 (u) Adopt, amend and repeal administrative rules in accordance with ORS chapter 183;
6 and

7 (v) Perform any other act in accordance with law that in the judgment of the authority's
8 board of directors is necessary or appropriate to carry out the authority's purposes.

9 (4) The authority may exercise the powers set forth in this section, notwithstanding that
10 by exercising a power, the authority engages in activities that state or federal antitrust laws
11 may deem to be anticompetitive.

12 (5) Moneys and other proceeds that the authority realizes from conducting activities
13 under subsection (3)(f) of this section belong solely to the authority. The State of Oregon
14 does not have a proprietary interest in the moneys or other proceeds.

15 (6)(a) The authority may bring, on the authority's own behalf, on behalf of the state or
16 on behalf of any other injured person, any legal action that is permitted under federal, state
17 or common law to seek damages, equitable relief or another remedy, in any court or in any
18 administrative or other proceeding, for illegal activity that:

19 (A) Damages cargo, cargo containers or cargo transportation vehicles or equipment;

20 (B) Delays or hinders operations or efforts to transport, move or otherwise handle cargo
21 or to use cargo containers or cargo transportation vehicles or equipment; or

22 (C) Injures any person who is engaged in transporting, moving or otherwise handling
23 cargo or in using cargo transportation vehicles or equipment.

24 (b) The authority may engage legal counsel and employ any person to investigate or
25 evaluate a case or bring an action under paragraph (a) of this subsection.

26 (c) The authority may establish a system to allocate damages the authority recovers
27 from an action under this subsection to a person that has a claim for damages, and may
28 retain up to 25 percent of the recovery to compensate the authority for costs related to
29 bringing an action under this subsection.

30 (7) The authority may contract with a public safety agency or law enforcement agency
31 of this state to investigate and prosecute criminal activity that occurs in or around the
32 authority's property or facilities and that affects trade within this state.

33 (8) Not later than April 15 of each year, the authority shall file with the Governor and
34 the appropriate committees of the Legislative Assembly, or, if the Legislative Assembly is
35 not in session, the appropriate interim committees of the Legislative Assembly, a report that
36 describes the operations and activities of the authority during the preceding year.

37 **SECTION 4.** (1) ORS chapters 35, 190, 192, 244 and 295 and ORS 30.260 to 30.460, 200.005
38 to 200.025, 200.045 to 200.090, 236.605 to 236.640, 243.650 to 243.782, 307.090 and 307.112 apply
39 to the Oregon Shipping Authority under the same terms as the statutes apply to public
40 bodies other than the State of Oregon.

41 (2) Notwithstanding subsection (1) of this section and except as otherwise provided by
42 law, ORS chapters 182, 240, 276, 279A, 279B, 279C, 282, 283, 291, 292 and 293 and ORS 35.550
43 to 35.575, 180.060, 180.210 to 180.235, 184.305 to 184.345, 190.430, 190.480, 190.490, 192.105, 243.696,
44 278.011 to 278.120, 278.315 to 278.415, 279.835 to 279.855, 283.085 to 283.092, 357.805 to 357.895
45 and 656.017 (2) do not apply to the authority or to a subsidiary entity that the authority

1 forms or acquires to carry out the purposes set forth in section 3 of this 2017 Act.

2 (3) Notwithstanding subsection (2) of this section, ORS 279A.100, 279A.105, 279A.107 and
3 279A.110 apply to the authority, the directors, officers and employees of the authority and a
4 subsidiary entity that the authority forms or acquires as if the authority or the subsidiary
5 entity were a contracting agency, as defined in ORS 279A.010.

6 (4) Sections 1 to 22 of this 2017 Act and other laws described in this section that apply
7 to the authority must be liberally construed to effect the authority's purpose and mission
8 as set forth in sections 1 to 22 of this 2017 Act.

9 **SECTION 5.** (1) The Oregon Shipping Authority may by rule establish a police department
10 and commission employees of the authority as police officers. A police department that the
11 authority establishes under this section has the authority and immunity of a municipal police
12 department in this state.

13 (2) A police officer that the authority commissions under this section has the authority
14 and immunity that a peace officer or police officer in this state has and may enforce criminal
15 laws of this state and any administrative rules the authority adopts under sections 1 to 22
16 of this 2017 Act.

17 (3) If the authority establishes a police department and commissions police officers under
18 this section, the authority shall appoint a chief of police and in collaboration with the chief
19 of police shall by rule establish a process to receive and respond to complaints against the
20 police department or about the conduct of police officers.

21 (4) The authority may enter into a contract or agreement under the terms of which:

22 (a) The police officers of the authority and of a political subdivision, a municipal corpo-
23 ration, a department or an agency of the state provide mutual aid; or

24 (b) A public safety agency of the state provides services to investigate or prosecute a
25 crime or violation of a rule of the authority.

26 **SECTION 6.** (1) Legal title to real and personal property and any facilities that the State
27 of Oregon acquired before the operative date of sections 1 to 22 of this 2017 Act that the
28 Oregon Shipping Authority uses or manages in accordance with sections 1 to 22 of this 2017
29 Act remains with the State of Oregon. The Oregon Shipping Authority has the exclusive
30 care, custody and control of the real and personal property and facilities under the terms
31 of an exclusive leasehold interest in the real and personal property and facilities for a term
32 of 99 years. The term of the leasehold begins on the operative date of sections 1 to 22 of this
33 2017 Act and shall renew automatically and perpetually for consecutive 99-year terms.

34 (2) Notwithstanding any other provisions of Oregon law concerning the authority of state
35 agencies to lease real property and facilities, the Oregon Department of Administrative Ser-
36 vices, acting on behalf of the State of Oregon, shall execute a lease for all real and personal
37 property and facilities to which the State of Oregon has title and that the Oregon Shipping
38 Authority uses in accordance with sections 1 to 22 of this 2017 Act. The department may not
39 terminate the lease unless:

40 (a) The Oregon Shipping Authority ceases operations or ceases to exist, or the Legislative
41 Assembly or another operation of law alters the purposes or powers of the authority in such
42 a manner as to make the lease no longer tenable;

43 (b) The State of Oregon conveys or transfers title to the real or personal property and
44 facilities to a nongovernmental entity in accordance with applicable law; and

45 (c) The State of Oregon does not place any other conditions upon the Oregon Shipping

1 Authority in connection with the termination.

2 (3) The Oregon Shipping Authority shall pay the State of Oregon the sum of \$99 as con-
3 sideration at the time the authority executes or renews the lease.

4 (4) The Oregon Shipping Authority shall manage and maintain all real and personal
5 property and facilities that are subject to the lease described in this section. The authority
6 may not sell or convey legal title to, but may encumber, the real and personal property and
7 facilities. The State of Oregon may encumber the real and personal property and facilities
8 only in a manner that would not impair the financial condition of the authority or the rights
9 of any person that holds an obligation of the authority.

10 **SECTION 7.** (1) The Port of Portland shall convey all right, title, ownership and interest
11 in Terminal 6 to the Oregon Shipping Authority and shall execute all necessary legal docu-
12 ments and other procedures necessary for the conveyance. The conveyance is effective on
13 the operative date of sections 1 to 22 of this 2017 Act.

14 (2) The Oregon Department of Administrative Services shall assist the Port of Portland
15 and the authority in preparing all of the necessary documents and in following all the re-
16 quired procedures for the conveyance.

17 (3) The authority shall pay the costs for the conveyance from funds appropriated to the
18 authority for the purposes set forth in this section.

19 **SECTION 8.** (1) The Oregon Shipping Authority, by September 1 of each even-numbered
20 year, shall submit to the Oregon Department of Administrative Services a funding request
21 for the coming biennium. The department shall include and submit the authority's request
22 to the Legislative Assembly as part of the Governor's biennial budget.

23 (2) The Legislative Assembly shall appropriate the authority's budget request to the de-
24 partment for allocation to the authority. Funds that the Legislative Assembly appropriates
25 to the department for allocation to the authority are subject to any restrictions or conditions
26 that the Legislative Assembly places on the funds, but the conditions and restrictions do not
27 apply to other funds the authority uses in the authority's budget or operations.

28 (3) The authority shall prepare the authority's budget and any funding request under this
29 section in accordance with generally accepted accounting principles. The authority's board
30 of directors shall adopt a budget for the authority in accordance with ORS 192.610 to 192.690.

31 **SECTION 9.** (1) The Oregon Shipping Authority shall promptly and in writing notify the
32 Legislative Assembly or the Emergency Board, if the Legislative Assembly is not in session,
33 after discovering any shortfall in moneys available to pay when due an amount necessary to
34 satisfy a bond or other debt obligation or an agreement to repay moneys the authority bor-
35 rowed. In the notification, the authority shall specify the amount of the shortfall.

36 (2) In enacting this section, the Legislative Assembly acknowledges an intention to pro-
37 vide, from funds other than funds previously appropriated to the authority, moneys neces-
38 sary to pay the debt or obligation. This subsection does not, however, legally obligate the
39 Legislative Assembly or the Emergency Board to provide funds for the purpose set forth in
40 this section except to the extent that the Oregon Constitution may require the provision of
41 funds.

42 **SECTION 10.** (1) The Oregon Shipping Authority may adopt policies to govern access to
43 personnel records that are less than 25 years old.

44 (2) A policy the authority adopts under subsection (1) of this section must subject per-
45 sonnel records to restrictions on access unless the president of the authority finds that the

1 public interest in maintaining individual rights to privacy would not suffer by disclosing the
2 records. The authority may designate classes of information or persons that are subject to
3 disclosure or may grant access subject to stated times and conditions, but the authority may
4 not limit access to records that are more than 25 years old.

5 (3) The authority may not adopt or enforce a rule or policy that denies or limits an
6 employee's access to the employee's personnel records. The authority shall keep personnel
7 records in a designated location that is available to the employee.

8 **SECTION 11.** (1) Oregon Shipping Authority may authorize an officer or employee of the
9 authority to receive compensation from private or public resources, including but not limited
10 to income from:

11 (a) Consulting;

12 (b) Appearances and speeches;

13 (c) Intellectual property the officer or employee conceives, reduces to practice or origi-
14 nates and that the authority owns;

15 (d) Providing services or other valuable consideration for a private corporation, individual
16 or entity, whether the officer or employee receives cash, in-kind payment, stock or another
17 equity interest, or anything of value regardless of whether a licensing agreement exists be-
18 tween the authority and the private entity; and

19 (e) Performing public duties for which private organizations, including affiliates of the
20 authority, pay the officer or employee and augment the officer's or employee's publicly
21 funded compensation, provided that the authority establishes policies under which the au-
22 thority permits the compensation to the officer or employee.

23 (2) The authority may not authorize compensation, as described in subsection (1) of this
24 section, that, in the authority's judgment, does not comport with the mission of the au-
25 thority or that substantially interferes with an officer's or employee's duties to the author-
26 ity.

27 (3) Compensation described and authorized under subsection (1) of this section is official
28 compensation or reimbursement of expenses for the purposes of ORS 244.040 and is not an
29 honorarium prohibited under ORS 244.042. If the authority's authorization or the officer's
30 or employee's receipt of the compensation creates a potential conflict of interest, the officer
31 or employee shall report the potential conflict in writing in accordance with policies the au-
32 thority adopts. The disclosure is a public record that is subject to public inspection.

33 (4) The authority shall adopt standards that govern an employee's outside employment
34 and activities, that define potential conflicts of interest in a manner that is consistent with
35 ORS 244.020, that address resolutions and public disclosures of conflicts of interest and that
36 specify procedures for reporting and hearing complaints about potential or actual conflicts
37 of interest.

38 **SECTION 12.** (1) Sections 1 to 22 of this 2017 Act do not impair the obligations or agree-
39 ments of the State of Oregon or the Oregon Department of Administrative Services with
40 respect to bonds, certificates of participation, financing agreements or other agreements to
41 borrow money that the state or the department issued before the operative date of sections
42 1 to 22 of this 2017 Act for equipment, facilities or other property within or connected to
43 Terminal 6 or that otherwise passes to or comes under the control of the Oregon Shipping
44 Authority on and after the operative date of sections 1 to 22 of this 2017 Act. The authority
45 and the department shall take all actions necessary to ensure full compliance with all

1 indentures, resolutions, declarations, agreements and other documents related to the bonds,
2 certificates of participation, financing agreements or other agreements to borrow money
3 that the state or the department issued before the operative date of sections 1 to 22 of this
4 2017 Act. The authority and the department shall establish, in a written agreement that the
5 State Treasurer approves, the authority's responsibility to pay to the department moneys
6 that are sufficient to pay when due all principal, interest and any other charges on bonds,
7 certificates of participation, financing agreements or other agreements to borrow money
8 that the state or the department issued before the operative date of sections 1 to 22 of this
9 2017 Act for equipment, facilities or other property within or connected to Terminal 6 or that
10 otherwise passes to or comes under the control of the authority on and after the operative
11 date of sections 1 to 22 of this 2017 Act.

12 (2) A person that holds obligations that the authority issues on or after the operative
13 date of sections 1 to 22 of this 2017 Act may receive payment from the rents, revenues, re-
14 cepts, appropriations or other income of the authority without priority over payments due
15 to a person that holds an obligation that the state or the department issued before the op-
16 erative date of sections 1 to 22 of this 2017 Act for equipment, facilities or other property
17 within or connected to Terminal 6 or that otherwise passes to or comes under the control
18 of the authority on and after the operative date of sections 1 to 22 of this 2017 Act, but only
19 to the extent that:

20 (a) The person does not have a right, lien or other interest with respect to the rents,
21 revenues, receipts, appropriations or other income of the authority that is senior or superior
22 to the right granted to a person that holds obligations that the state or the department is-
23 sued before the operative date of sections 1 to 22 of this 2017 Act for equipment, facilities
24 or other property within or connected to Terminal 6 or that otherwise passes to or comes
25 under the control of the authority on and after the operative date of sections 1 to 22 of this
26 2017 Act; and

27 (b) The state or the department, acting on the person's behalf, has a lien or other secu-
28 rity interest in the rents, revenues, receipts, appropriations or other income of the authority
29 that is not junior to and is at least proportionate with any lien or other security interest that
30 a person that holds an obligation the authority issued has with respect to the rents, reven-
31 ues, receipts, appropriations or other income of the authority.

32 (3) The authority shall pay when due any expenses, including legal expenses, judgments,
33 liabilities and federal arbitrage and rebate penalties that arise from the authority's actions
34 if the state or the department incurred the expenses in connection with bonds, certificates
35 of participation, financing agreements or other agreements to borrow money that the state
36 or the department issued before the operative date of sections 1 to 22 of this 2017 Act for
37 equipment, facilities or other property within or connected to Terminal 6 or that otherwise
38 passes to or comes under the control of the authority on and after the operative date of
39 sections 1 to 22 of this 2017 Act. The authority may reasonably contest the expenses. The
40 authority shall assist the department in making any necessary calculations and filing any
41 necessary reports related to arbitrage and rebate on the indebtedness described in this sec-
42 tion.

43 (4) Amounts deposited as debt service in reserve accounts with the State Treasurer, the
44 department or the department's designated agents must remain with the State Treasurer,
45 the department or the department's designated agents until the bonds, certificates of par-

1 participation, financing agreements or other agreements to borrow money for which the reserve
 2 accounts were established have been retired or defeased, if the debt service is for bonds,
 3 certificates of participation, financing agreements or other agreements to borrow money
 4 that the state or the department issued before the operative date of sections 1 to 22 of this
 5 2017 Act for equipment, facilities or other property within or connected to Terminal 6 or that
 6 otherwise passes to or comes under the control of the authority on and after the operative
 7 date of sections 1 to 22 of this 2017 Act. The authority must be credited with any investment
 8 earnings on the reserve accounts.

9 **SECTION 13.** (1) The Oregon Shipping Authority may from time to time issue and sell
 10 revenue bonds in accordance with ORS chapter 287A, except that ORS 287A.150 (2) to (6) do
 11 not apply to revenue bonds that the authority issues. A revenue bond the authority issues
 12 under this section is not a general obligation of the authority or a charge upon the
 13 authority's revenue or property other than any revenue or property that the authority spe-
 14 cifically pledges. An obligation described in this section is not an indebtedness of the State
 15 of Oregon.

16 (2) A revenue bond that the authority issues under this section is a revenue bond of a
 17 political subdivision of the state for the purposes of the laws of the state.

18 (3) The authority may issue under ORS 287A.360 to 287A.380 refunding bonds of the same
 19 character and tenor as the bonds that the refunding bonds replace.

20 (4) The authority may not issue general obligation bonds.

21 **SECTION 14.** As used in sections 14 to 18 of this 2017 Act:

22 (1) "Credit enhancement agreement" means an agreement or contractual relationship
 23 between the Oregon Shipping Authority and a bank, trust company, insurance company,
 24 surety bonding company, pension fund or other financial institution that provides additional
 25 credit on or security for a financing agreement or certificate of participation authorized
 26 under sections 14 to 18 of this 2017 Act.

27 (2) "Financing agreement" means a lease-purchase agreement, an installment sale
 28 agreement, a loan agreement, a note agreement, a short-term promissory note, commercial
 29 paper, a line of credit or similar obligation or any other agreement to:

30 (a) Finance real or personal property that the authority owns and operates or will own
 31 and operate; or

32 (b) Refinance previously executed financing agreements.

33 (3) "Personal property" means tangible personal property, software and fixtures.

34 (4) "Property rights" means, with respect to personal property, the rights of a secured
 35 party under ORS chapter 79.

36 (5) "Software" means software and training and maintenance contracts related to oper-
 37 ating computing equipment.

38 **SECTION 15.** The Oregon Shipping Authority may enter into financing agreements in
 39 accordance with sections 14 to 18 of this 2017 Act under terms that the authority deems
 40 advantageous. Amounts the authority must pay under a financing agreement must be lim-
 41 ited to funds the authority specifically pledges, budgets for or otherwise makes available. If
 42 the authority does not have sufficient funds available to pay amounts due under a financing
 43 agreement, a lender may exercise any property rights that the authority has granted to the
 44 lender in the financing agreement against the property that the authority purchased with the
 45 proceeds of the financing agreement. The lender may apply the amounts the lender receives

1 toward payments the authority is scheduled to make under the financing agreement.

2 **SECTION 16.** The board of directors of the Oregon Shipping Authority may delegate to
3 any board member, officer or employee of the authority the power to determine maturity
4 dates, principal amounts, redemption provisions, interest rates or methods for determining
5 variable or adjustable interest rates, denominations and other terms and conditions of obli-
6 gations that the board does not appropriately determine at the time the board enacted or
7 adopted an authorizing resolution for the obligation. The board may also delegate the power
8 to enter into a financing agreement or other instruments authorized by law. The delegated
9 power must be exercised subject to applicable requirements of law and limitations and cri-
10 teria the board sets forth in the authorizing resolution.

11 **SECTION 17.** The Oregon Shipping Authority may:

12 (1) Enter into agreements with third parties to hold financing agreement proceeds, pay-
13 ments and reserves as security for lenders, and to issue certificates of participation in the
14 right to receive payments due from the authority under a financing agreement. The board
15 of directors of the authority may invest amounts the authority holds under an agreement
16 with the third party. The board may credit interest earned on any investments held as se-
17 curity for a financing agreement to the accounts the third party holds and may apply the
18 amounts as payment of sums due under a financing agreement.

19 (2) Enter into credit enhancement agreements related to financing agreements or cer-
20 tificates of participation, provided that the credit enhancement agreements are payable
21 solely from funds the authority specifically pledges, budgets for or otherwise makes available
22 or from amounts the lender receives as a result of exercising property rights granted under
23 the financing agreement.

24 (3) Use financing agreements to finance the costs of acquiring or refinancing real or
25 personal property, plus the costs of reserves, credit enhancements and costs associated with
26 obtaining the financing.

27 (4) Grant security interests in personal property to trustees or lenders.

28 (5) Make pledges for the benefit of trustees and lenders.

29 (6) Purchase fire and extended coverage or other casualty insurance for property that
30 the authority acquires or refinances with the proceeds of a financing agreement, assign the
31 proceeds of the insurance to a lender or trustee to the extent of the lender's or trustee's
32 interest, and covenant to maintain the insurance while the financing agreement is unpaid,
33 as long as available funds are sufficient to purchase the insurance.

34 **SECTION 18.** A lease or financing agreement under sections 14 to 18 of this 2017 Act does
35 not subject property to property taxation and must be disregarded in determining whether
36 property is exempt from taxation under ORS chapter 307.

37 **SECTION 19.** (1) The Oregon Shipping Authority shall establish a grant program to sup-
38 port projects that develop or enhance maritime shipping facilities that ports within this state
39 own and operate. In establishing the grant program, the authority shall consult with port
40 commissioners and other port officials.

41 (2) The authority shall identify projects that meet criteria that the authority establishes
42 for funding from the authority's grant program and shall seek funding for projects the au-
43 thority identifies from the Legislative Assembly during each regular session of the Legisla-
44 tive Assembly that occurs in an even-numbered year.

45 (3) A port's participation in a grant program under this section does not prevent a port

1 from seeking funding from the Legislative Assembly for projects the port intends to under-
2 take.

3 **SECTION 20.** (1)(a) The Secretary of State shall conduct an annual audit of the Oregon
4 Shipping Authority in accordance with ORS 297.210. As part of the audit, the Secretary of
5 State shall contract with a firm that is qualified to audit accounts of the type that the au-
6 thority maintains.

7 (b) The firm that conducts the audit required under paragraph (a) of this subsection
8 must be familiar with the accounting standards that apply to the reserves under review and
9 shall maintain errors and omissions insurance with limits that the Secretary of State pre-
10 scribes.

11 (c) The Secretary of State shall determine the scope of the audit required under para-
12 graph (a) of this subsection, which must include, but not be limited to:

13 (A) Reviewing the sources and uses of moneys the authority receives and expends;

14 (B) Reconciling changes in reserve values from the prior year;

15 (C) Examining the development of reserve inadequacies or redundancies over time;

16 (D) Assessing the future financial viability of the authority; and

17 (E) Evaluating losses and loss adjustment expense reserves in accordance with standards
18 developed for reasonably comparable operating and investment funds.

19 (d) The authority shall cooperate with the auditing firm in all respects and shall permit
20 the firm full access to all information the firm deems necessary for a true and complete
21 audit.

22 (e) The auditing firm shall conduct the audit required under paragraph (a) of this sub-
23 section using generally accepted accounting principles.

24 (f) The authority shall pay the cost of the audit required under paragraph (a) of this
25 subsection.

26 (2) The Secretary of State shall provide the Governor, the President of the Senate and
27 the Speaker of the House of Representatives with an annual report on the results of the
28 audit. The Secretary of State shall make the report available for public inspection in ac-
29 cordance with the Secretary of State's established rules and procedures for public disclosure
30 of audit documents.

31 (3) This section does not preclude the authority from conducting an internal audit or an
32 independent audit of the authority's operations or finances whenever the authority's board
33 of directors deems an audit necessary or prudent. The authority has exclusive discretion and
34 control of an audit under this subsection, subject to ORS 297.250. An audit under this sub-
35 section is subject to disclosure in accordance with ORS 192.410 to 192.505.

36 **SECTION 21.** The board of directors of the Oregon Shipping Authority shall report to the
37 Secretary of State by March 15 of each year:

38 (1) The total amount of assets the authority holds as of December 31 of the previous
39 year;

40 (2) The balance of any reserves and surplus moneys the board of directors established for
41 the authority as of December 31 of the previous year;

42 (3) Any funds in addition to the funds described in subsection (2) of this section as of
43 December 31 of the previous year; and

44 (4) The total amount of investment gain or loss the authority generated as of December
45 31 of the previous year.

1 **SECTION 22.** Not later than the 90th day after the Secretary of State completes and de-
2 livers to the board of directors of the Oregon Shipping Authority the results of an audit
3 under section 20 of this 2017 Act, the board and any subsidiary entity that the authority
4 formed or acquired and that was subject to the audit shall notify the Secretary of State in
5 writing of the measures that the board or the subsidiary has taken or proposes to take, if
6 any, to respond to the recommendations in the audit. The Secretary of State may extend the
7 90-day period for good cause.

8 **SECTION 23.** ORS 287A.001 is amended to read:

9 287A.001. As used in this chapter:

10 (1) "Advance refunding bond" means a bond all or part of the proceeds of which are to be used
11 to pay an outstanding bond one year or more after the advance refunding bond is issued.

12 (2) "Agreement for exchange of interest rates" means a contract, or an option or forward com-
13 mitment to enter into a contract, for an exchange of interest rates for related bonds that provides
14 for:

15 (a) Payments based on levels or changes in interest rates; or

16 (b) Provisions to hedge payment, rate, spread or similar exposure including, but not limited to,
17 an interest rate floor or cap or an option, put or call.

18 (3)(a) "Bond" means a contractual undertaking or instrument of a public body to repay borrowed
19 moneys.

20 (b) "Bond" does not mean a credit enhancement device.

21 (4) "Capital construction" has the meaning given that term in ORS 310.140.

22 (5) "Capital costs" has the meaning given that term in ORS 310.140.

23 (6) "Capital improvements" has the meaning given that term in ORS 310.140.

24 (7)(a) "Credit enhancement device" means a letter of credit, line of credit, standby bond pur-
25 chase agreement, bond insurance policy, reserve surety bond or other device or facility used to en-
26 hance the creditworthiness, liquidity or marketability of bonds or agreements for exchange of
27 interest rates.

28 (b) "Credit enhancement device" does not mean a bond.

29 (8) "Current refunding bond" means a bond the proceeds of which are to be used to pay or
30 purchase an outstanding bond less than one year after the current refunding bond is issued.

31 (9) "Forward current refunding" means execution and delivery of a purchase agreement or sim-
32 ilar instrument under which a public body contracts to sell current refunding bonds for delivery at
33 a future date that is one year or more after execution of the purchase agreement or similar instru-
34 ment.

35 (10) "General obligation bond" means exempt bonded indebtedness, as defined in ORS 310.140,
36 that is secured by a commitment to levy ad valorem taxes outside the limits of sections 11 and 11b,
37 Article XI, of the Oregon Constitution.

38 (11) "Lawfully available funds" means revenues or other moneys of a public body including, but
39 not limited to, moneys credited to the general fund of the public body, revenues from an ad valorem
40 tax and revenues derived from other taxes levied by the public body that are not dedicated, re-
41 stricted or obligated by law or contract to an inconsistent expenditure or use.

42 (12) "Operative document" means a bond declaration, trust agreement, indenture, security
43 agreement or other document in which a public body pledges revenue or property as security for a
44 bond.

45 (13) "Pledge" means:

- 1 (a) To create a lien on property pursuant to ORS 287A.140.
- 2 (b) A lien on property created pursuant to ORS 287A.140.
- 3 (c) To create a lien on property pursuant to ORS 287A.310.
- 4 (d) A lien on property created pursuant to ORS 287A.310.
- 5 (14) "Public body" means:
- 6 (a) A county of this state;
- 7 (b) A city of this state;
- 8 (c) A local service district as defined in ORS 174.116 (2);
- 9 (d) A special government body as defined in ORS 174.117;
- 10 (e) Oregon Health and Science University;
- 11 (f) A public university listed in ORS 352.002; [or]
- 12 **(g) The Oregon Shipping Authority; or**
- 13 [(g)] **(h) Any other political subdivision of this state that is authorized by the Legislative As-**
- 14 **sembly to issue bonds.**
- 15 (15) "Refunding bond" means an advance refunding bond, a current refunding bond or a forward
- 16 current refunding bond.
- 17 (16) "Related bond" means a bond for which the public body enters into an agreement for ex-
- 18 change of interest rates or obtains a credit enhancement device.
- 19 (17) "Revenue" means all fees, tolls, excise taxes, assessments, property taxes and other taxes,
- 20 rates, charges, rentals and other income or receipts derived by a public body or to which a public
- 21 body is entitled.
- 22 (18) "Revenue bond" means a bond that is not a general obligation bond.
- 23 (19) "Termination payment" means the amount payable under an agreement for exchange of in-
- 24 terest rates by one party to another party as a result of the termination, in whole or part, of the
- 25 agreement prior to the expiration of the stated term.
- 26 **SECTION 24. (1) Sections 1 to 22 of this 2017 Act and the amendments to ORS 287A.001**
- 27 **by section 23 of this 2017 Act become operative January 1, 2018.**
- 28 **(2) Notwithstanding the operative date specified in subsection (1) of this section, on or**
- 29 **after the effective date of this 2017 Act, in order to prepare the Oregon Shipping Authority**
- 30 **to begin operations as soon as practicable after the operative date specified in subsection (1)**
- 31 **of this section and to enable the board of directors of the authority to exercise, on and after**
- 32 **the operative date specified in subsection (1) of this section, all of the duties, powers and**
- 33 **functions conferred on the board of directors by sections 1 to 22 of this 2017 Act and the**
- 34 **amendments to ORS 287A.001 by section 23 of this 2017 Act:**
- 35 **(a) County commissioners in the regions described in section 2 of this 2017 Act may ap-**
- 36 **point directors to the authority's board of directors on an interim or temporary basis, sub-**
- 37 **ject to confirmation by majority vote in accordance with section 2 of this 2017 Act; and**
- 38 **(b) The board of directors may adopt rules, bylaws or policies that are necessary to or-**
- 39 **ganize the authority.**
- 40 **(3) The Director of the Oregon Department of Administrative Services and the Port of**
- 41 **Portland may adopt rules and take other actions before the operative date specified in sub-**
- 42 **section (1) of this section that are necessary to support the formation and organization of**
- 43 **the Oregon Shipping Authority, to secure the authority's management over existing property**
- 44 **and facilities that the state or the port owns and to enable the director, on and after the**
- 45 **operative date specified in subsection (1) of this section, to exercise the duties, powers and**

1 functions conferred on the director by sections 1 to 22 of this 2017 Act and the amendments
2 to ORS 287A.001 by section 23 of this 2017 Act.

3 **SECTION 25.** Section 3 (6) of this 2017 Act applies to illegal activity that occurs on and
4 after January 1, 2014 or, if the illegal activity occurs before January 1, 2014, to illegal activity
5 that results in damage that occurs on or after January 1, 2014.

6 **SECTION 26.** This 2017 Act being necessary for the immediate preservation of the public
7 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect
8 on its passage.

9
