

Enrolled House Bill 3143

Sponsored by COMMITTEE ON CLIMATE, ENERGY, AND ENVIRONMENT (at the request of Representative Pam Marsh)

CHAPTER

AN ACT

Relating to the securitization of public utility expenditures other than expenditures for generation asset retirement; creating new provisions; amending ORS 59.025, 757.415, 757.425, 757.445 and 757.450; repealing ORS 757.455 and 757.460; and declaring an emergency.

Whereas the purpose of this 2023 Act is to allow a public utility, if authorized by an order issued by the Public Utility Commission, to use securitization financing for certain types of costs related to emergency events and approved for recovery in rates; and

Whereas securitized debt may lower the total rates in comparison with other methods of recovery and may benefit the citizens of this state who are public utility customers; and

Whereas rate recovery bonds are not a public debt or pledge of the full faith and credit of the state but require the state to provide clear and exclusive methods to create, transfer and encumber the rate recovery assets and prohibit future impairment; and

Whereas this 2023 Act allowing public utilities to use securitization financing for emergency related costs does not limit, impair or affect the Public Utility Commission’s plenary authority and jurisdiction over rates and services offered by public utilities; now, therefore,

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

SECTION 1. As used in this section and sections 3, 4 and 6 of this 2023 Act:

(1) “Assignee” means a person, and any subsequent assignee, to which a public utility assigns, sells or transfers all or part of the public utility’s interest in or right to rate recovery assets, except as security.

(2) “Bond” includes bonds, notes, certificates of beneficial interests in a trust or other evidence of indebtedness.

(3) “Bondholder” means a holder or owner of a rate recovery bond.

(4) “Finance subsidiary” means an assignee at the time rate recovery bonds are issued:

(a)(A) That is beneficially owned, directly or indirectly, by a public utility; or

(B) In the case of a trust, for which a public utility or subsidiary of the public utility is the grantor; or

(b) That is unaffiliated with a public utility and acquires bondable rate recovery assets from a public utility in a transaction or under an agreement that is approved by the Public Utility Commission.

(5) “Financing costs” includes the following costs related to rate recovery bonds, whether incurred and paid upon issuance or over the life of rate recovery bonds:

(a) The costs of issuing, serving, managing, repaying or refinancing rate recovery bonds, including any fees, expenses or charges incurred and the costs of any activities performed in connection with the rate recovery bonds, including:

- (A) Information technology programming;
- (B) Obtaining a financing order;
- (C) Serving, accounting or auditing;
- (D) Services related to trustees;
- (E) Legal services;
- (F) Consulting;
- (G) Services related to financial and structuring advisors;
- (H) Administration;
- (I) Placement and underwriting;
- (J) Services related to independent directors and managers;
- (K) Services related to rating agencies;
- (L) Stock exchange listing and compliance;
- (M) Securities registration and filing; and

(N) Services necessary to ensure a timely payment of rate recovery bonds or other amounts or charges payable in connection with rate recovery bonds;

(b) Principal, interest and acquisition, defeasance and redemption premiums payable on rate recovery bonds;

(c) Payments required under an ancillary agreement and any amounts required to fund or replenish a reserve or account established under the terms of an indenture, ancillary agreement or financing document related to rate recovery bonds;

(d) Applicable federal, state and local taxes, franchise fees, license fees, gross receipts or other taxes or charges, whether paid, payable or accrued; and

(e) The Public Utility Commission's costs in performing the commission's duties related to rate recovery bonds that are recoverable by the commission under ORS 756.310.

(6) "Financing order" means an order issued by the Public Utility Commission that authorizes one or more the following:

- (a) The recovery of rate recovery expenditures and financing costs;
- (b) The creation of rate recovery assets;
- (c) The issuance of rate recovery bonds;
- (d) The imposition, collection and periodic adjustment of rate recovery charges; or
- (e) The sale, assignment or transfer of rate recovery assets to an assignee.

(7) "Financing party" includes:

- (a) Bondholders, trustees, agents and secured parties related to rate recovery bonds;
- (b) A person acting for the benefit of bondholders, trustees, agents or secured parties;

and

(c) A party to rate recovery bond documents or an ancillary agreement.

(8) "Public utility customer" means:

(a) For an electric utility, a retail electricity consumer, as defined in ORS 757.600.

(b) For a natural gas utility, the end use consumer served by the natural gas utility, including those served by the natural gas utility under ORS 757.516, regardless of whether the end use consumer purchases natural gas from the natural gas utility.

(9) "Rate recovery asset" means a right to recover from customers rate recovery expenditures and associated costs and expenses approved in a financing order, including the right to:

(a) Impose, charge, bill, collect, receive, hold and apply rate recovery charges authorized under a financing order or obtain, to the extent authorized, periodic adjustments of rate recovery charges; and

(b) All claims, accounts, revenues, payments, collections, moneys or proceeds arising from the rights and interest specified in a financing order, regardless of whether the claims,

accounts, revenues, payments, collections, moneys or proceeds arising from the rights and interest specified in the financing order are commingled with other claims, accounts, revenues, payments, collections, moneys or proceeds.

(10) "Rate recovery charge" means charges to public utility customers authorized by the Public Utility Commission to recover rate recovery expenditures and financing costs and to be used to pay, repay or refinance rate recovery bonds.

(11) "Rate recovery expenditures" means costs and expenses incurred or to be incurred through the date of issuance of a financing order by a public utility associated with:

(a) An event that is the subject of a federal or state declaration of a state of emergency, such as severe weather, catastrophic wildfire, pandemic or other event that causes or threatens to cause widespread loss of life, injury to person or property, human suffering or financial loss, except those costs and expenses that are or are associated with criminal or civil fines or penalties or judgments from a civil action based on negligence related to the event.

(b) An energy conservation program that provides loans and cash payments to public utility customers for the installation of energy conservation measures funded by the public utility including, but not limited to, the costs or expenditures for specific acquisition program development, promotion and labor costs and associated general supervision, rents, leases and overheads.

(12) "Secured party" means a financing party that has been granted a security interest in rate recovery assets.

SECTION 1a. Section 1 of this 2023 Act is added to and made a part of ORS 757.400 to 757.460.

SECTION 2. ORS 757.455 is repealed and sections 3 and 4 of this 2023 Act are enacted in lieu thereof.

SECTION 3. (1) It is the policy of the State of Oregon to encourage the financing of certain costs and expenses by public utilities at the lowest, reasonable and prudent cost to public utility customers, including, but not limited to, rate recovery expenditures.

(2) To carry out the policy described in subsection (1) of this section, the State of Oregon and all public bodies, as defined in ORS 174.109:

(a) Acknowledge that owners of rate recovery assets, bondholders and financing parties require certainty with respect to the owners', bondholders' and financing parties' rights to enter into financing transactions that offer the lowest reasonable and prudent cost; and

(b) Pledge and agree with public utilities, assignees, bondholders and financing parties not to reduce, alter or impair, in a manner that is adverse to the public utilities, assignees, bondholders or financing parties:

(A) Rate recovery assets;

(B) Rate recovery bonds or the security for rate recovery bonds; or

(C) Rate recovery charges or the collection of rate recovery charges.

(3) The pledge and agreement described under subsection (2)(b) of this section includes the pledge and agreement not to reduce, alter or impair rate recovery assets, rate recovery bonds or the security for rate recovery bonds, or rate recovery charges or the collection of rate recovery charges by taking any of the following actions:

(a) Altering the provisions of this section or section 1, 4 or 6 of this 2023 Act to the extent that those provisions authorize the Public Utility Commission to issue financing orders that:

(A) Create rate recovery assets;

(B) Establish rate recovery charges that may not be avoided by public utility customers, as described under section 4 (4) of this 2023 Act; or

(C) Provide rights and remedies to public utilities, assignees, bondholders and financing parties;

(b) Impairing the rights or remedies of public utilities, assignees, bondholders or financing parties that are created under this section and sections 1, 4 and 6 of this 2023 Act or by a financing order, including reducing the amount of or impairing the collection of rate recovery charges until all principal, interest, premium and other amounts due on the rate recovery bonds and financing costs have been paid in full and except as provided under section 4 of this 2023 Act; or

(c) Taking any action listed under section 4 (5)(b) of this 2023 Act.

(4) A public utility or financing subsidiary that issues rate recovery bonds may include the pledge and provisions of this section in the bonds and related documentation.

SECTION 4. (1)(a) A public utility may apply to the Public Utility Commission for a financing order designating all or part of rate recovery expenditures as bondable rate recovery expenditures, for the purpose of financing or refinancing the designated expenditures under ORS 757.415 (1)(f).

(b) After notice and an opportunity for a hearing, the commission may approve an application if the commission finds that:

(A) The rate recovery expenditures included in the application are reasonable and prudent;

(B) Financing or refinancing the rate recovery expenditures through the issuance of rate recovery bonds is likely to be more favorable to public utility customers for the recovery of rate recovery expenditures as compared to other methods; and

(C) Bonds, notes, certificates of beneficial interests in a trust and other evidences of indebtedness or ownership issued pursuant to the approval are reasonably likely to receive a determination of, at a minimum, investment grade by credit rating agencies.

(c) The commission shall issue an order within 180 days of an application approving or denying the application. If the commission approves the application, the commission shall issue a financing order.

(2)(a) A financing order issued under this section shall specify the highest amount of rate recovery expenditures that qualify as bondable rate recovery expenditures.

(b) In specifying the amount for rate recovery expenditures associated with an event described in section 1 (11)(a) of this 2023 Act, net of appropriate adjustments as determined by the commission to be reasonable, the commission may include, but is not limited to including, the following rate recovery expenditures:

(A) Capital and operating costs incurred or to be incurred as a result of the event;

(B) Lost revenue associated with the event;

(C) Costs and expenses that may be recovered at a later time from third parties or insurers and returned to public utility customers through a separate rate proceeding consistent with cost causation and rate design principles and statutory or regulatory requirements; and

(D) Carrying costs or charges.

(3) A financing order issued under this section must include the following provisions:

(a) Confirmation of the existence of recoverable rate recovery expenditures and authorization to recover rate recovery expenditures and associated financing costs, including the maximum principal amount of bondable rate recovery expenditures and financing costs that may be recovered through securitization;

(b) Authorization for the creation of rate recovery assets and imposition of rate recovery charges that allow for the recovery of rate recovery expenditures, as determined by the commission, and associated financing costs;

(c) A requirement that the rate recovery charges authorized by the financing order are ongoing and may not be avoided by a public utility customer, as described under subsection (4) of this section, until all principal, interest, premium and other amounts due on the rate recovery bonds and financing costs have been paid in full;

(d) A methodology for:

(A) Allocating rate recovery charges between the different classes of public utility customers, which may include not allocating rate recovery charges to one or more classes of public utility customers, that is consistent with cost causation and rate design principles and statutory or regulatory requirements; and

(B) Adjusting rate recovery charges as necessary to ensure timely payment on, and payment in full of, the rate recovery bonds and associated financing costs or in response to changes to applicable customers, service territories or collection rates;

(e) Authorization for the public utility to issue one or more series of rate recovery bonds with flexibility for the public utility to establish the terms and conditions of the rate recovery bonds, including repayment schedules, initial interest rates and initial financing costs;

(f) Authorization to assign rate recovery assets to a financing subsidiary and grant security interests in the rate recovery assets to secured parties without limiting the rights of subsequent assignees;

(g) Authorization for the bond documentation and ancillary documents related to the rate recovery bonds, including servicing arrangements for the rate recovery charges, without requiring the authorization to be on the final forms of the documents;

(h) Authorization for the public utility to earn a return, at the cost of capital authorized in the public utility's most recent general rate case prior to the date of the financing order, on any moneys advanced by the public utility to fund advances, reserves or capital accounts established under the terms of any indenture, ancillary agreement or financing documents related to the rate recovery bonds;

(i) A finding that the proposed issuance of rate recovery bonds and the imposition of rate recovery charges is expected to provide the lowest possible reasonable and prudent cost on a net present value basis to public utility customers for recovery of the rate recovery expenditures as compared to other methods of financing and recovery;

(j) A date, not earlier than one year from the date that the financing order becomes final, on which the authority to issue rate recovery bonds granted in the financing order expires;

(k) A requirement that the public utility notify the commission if the public utility recovers costs and expenses from a third party or insurer; and

(L) Any other conditions that the commission finds appropriate and that are consistent with this section.

(4) Rate recovery charges authorized by a financing order shall be collected through the rates or charges paid by, and may not be avoided by, the public utility customers located within the public utility's allocated service territory, as the territory existed on the date of the financing order or, if the financing order provides, as such service territory may be expanded, even if:

(a) The public utility customer receives electricity or natural gas, electricity or natural gas services or ancillary services from a successor or assignee of the public utility;

(b) The public utility customer elects to receive electricity or natural gas, electricity or natural gas services or ancillary services from another public utility, utility provider or service provider in the service territory; or

(c) After the date of issuance of the financing order, the public utility customer changes customer class.

(5)(a) Rate recovery assets, including rate recovery charges, and the rights of public utilities, assignees, bondholders and financing parties, established by a financing order issued under this section, are irrevocable and unchangeable, except as provided in the financing order, until all principal, interest, premium, interest and amounts due on the rate recovery bonds and financing costs are paid in full.

(b) Until all principal, interest, premium, interest and amounts due on the rate recovery bonds and financing costs are paid in full, the commission, except as provided in the financing order, the State of Oregon and a public body, as defined in ORS 174.109, may not:

(A) Revalue the rate recovery expenditures or financing costs for ratemaking purposes;

(B) Determine that the rates or revenues authorized under the financing order are unjust or unreasonable;

(C) Reduce, alter or impair the rate recovery assets, rate recovery charges or the collection of the rate recovery charges, or rate recovery bonds or the security for the rate recovery bonds;

(D) Rescind, suspend, amend or impair the financing order; or

(E) When setting other rates or charges for the public utility or taking other actions pursuant to the commission's authority, consider the rate recovery bonds as debt of the public utility, the rate recovery assets to be revenue for the public utility or the rate recovery expenditures to be costs of the public utility.

(6) The commission may not require a public utility to:

(a) Apply to the commission for a financing order designating all or part of rate recovery expenditures as bondable rate recovery expenditures; or

(b) Finance or refinance rate recovery expenditures that the commission has designated as bondable rate recovery expenditures.

(7) Jurisdiction for review of a financing order issued under this section shall be as provided for orders in contested cases pursuant to ORS 183.482, except that a petition for rehearing or reconsideration is not allowed. If a petition is not filed with the Court of Appeals within 60 days following the date of issuance of a financing order, the order becomes a final and irrevocable action of the commission and the State of Oregon and is not subject to administrative or judicial challenge.

SECTION 5. ORS 757.460 is repealed and section 6 of this 2023 Act is enacted in lieu thereof.

SECTION 6. (1)(a) A public utility, finance subsidiary or assignee may grant a security interest in rate recovery assets as collateral for rate recovery bonds. A security interest in rate recovery assets is valid and enforceable against the debtor and third parties, subject only to the rights of any third parties holding security interests in the rate recovery assets attached and perfected in the manner described under this subsection.

(b) A security interest in rate recovery assets attaches if:

(A) The secured party, or a financing party that the secured party represents, has given value; and

(B) The debtor has signed a security agreement granting the secured party a security interest in the rate recovery assets.

(c) A valid and enforceable security interest in rate recovery assets is perfected if:

(A) The security interest has attached in the manner described in paragraph (b) of this subsection; and

(B) A financing statement has been filed in accordance with the requirements of ORS chapter 79 that identifies the debtor as "debtor," the secured party as "secured party" and the rate recovery assets granted as security as the "collateral," and contains a description in the financing statement that refers to the Public Utility Commission's financing order creating the rate recovery assets. The financing statement shall be deemed sufficient under ORS chapter 79 and all other relevant law for identifying the rate recovery assets granted as security.

(d) A perfected security interest in rate recovery assets is a continuously perfected security interest, whether or not the related revenues have accrued or the related rate recovery charges have been charged, billed or collected. Rate recovery assets constitute a presently existing, fully vested property right for the purposes of contracts securing the rate recovery bonds, whether or not the related revenues have accrued or the related rate recovery charges have been charged, billed or collected. Multiple security interests in the same rate recovery assets shall rank according to priority in time of perfection.

(e) Subject to the terms of the security agreement covering the rate recovery assets, the relative priority of a security interest created or perfected under this section is not adversely affected by:

(A) Any later modification of the financing order or rate recovery assets; or

(B) The commingling of proceeds of rate recovery assets with other moneys.

(2)(a) A transfer of rate recovery assets to an assignee is perfected against all third parties if a notice of the transfer, by means of a financial statement:

(A) Is filed in accordance with the requirements of ORS chapter 79;

(B) Specifies that the notice of transfer is filed to provide notice of the transfer of the rate recovery assets from the transferor to the assignee;

(C) Identifies the transferor as “debtor,” the assignee as “secured party” and the rate recovery asset as “collateral”; and

(D) Contains a description that refers to the commission’s financing order that created the rate recovery assets.

(b) A notice of transfer that is filed in accordance with the requirements under paragraph (a) of this subsection shall be deemed sufficient under ORS chapter 79 and all other relevant laws for identifying the rate recovery assets and for providing notice that the rate recovery assets have been transferred to the assignee.

(c) A transfer is perfected against third parties on the date a notice of transfer is filed.

(d) A transfer of rate recovery assets to a financing subsidiary that is perfected under this subsection is free and clear of all claims, security interests, liens and encumbrances of the transferring public utility, except for any prior security interest perfected under subsection (1) of this section.

(e) The priority of a transfer that is perfected under this subsection is not adversely affected by:

(A) Any later modification of the financing order or rate recovery assets; or

(B) The commingling of proceeds of rate recovery assets.

(3)(a) When proceeds of rate recovery assets are transferred to a segregated account for an assignee or secured party, any lien or security interest that may apply to those proceeds, other than a security interest perfected under subsection (1) of this section, is automatically terminated, without the need for further notice, act or evidence.

(b) Proceeds from rate recovery assets shall be held in trust for an assignee or secured party until the proceeds have been transferred to the assignee or secured party.

(c) Any adjustment in rate recovery charges does not affect the validity, perfection or priority of a security interest in or the transfer of rate recovery assets.

(4)(a) The rights and remedies of a secured party in enforcing a secured interest in rate recovery assets do not include and are without recourse to any public utility asset except for the rate recovery assets, even if the rate recovery assets are commingled with other assets.

(b) If a public utility or finance subsidiary defaults on a required payment with respect to rate recovery bonds, a secured party or secured party’s representatives may apply to the commission for relief. Upon application by a secured party or secured party’s representatives, the commission shall order, without limiting other remedies of the secured party or secured party’s representatives, the sequestration and payment to the secured party or secured party’s representatives of the proceeds of the rate recovery assets.

(c) The interest of an assignee or financing party in rate recovery assets is not subject to setoff, counterclaim, surcharge or defense by the public utility or any other person in connection with a bankruptcy, reorganization or insolvency proceeding. However, any surplus in excess of amounts necessary to pay principal, interest, premium, if any, and other amounts due with respect to the rate recovery bonds and associated financing costs, including enforcement costs, with respect to the security agreement shall be remitted to the debtor or transferor.

(d) Notwithstanding any bankruptcy, reorganization or other insolvency proceeding with respect to a public utility, debtor or transferor with respect to rate recovery assets, the commission's financing order shall remain in full force and effect.

(5) A transfer of rate recovery assets by a public utility to a finance subsidiary or other assignee that the parties have expressly stated in the governing documentation to be a sale or other absolute transfer, in a transaction approved in a financing order, shall be treated as a true sale and not as a pledge or other financing of the rate recovery assets. According the holders of rate recovery bonds a preferred right to revenues of the public utility or the provision by the public utility of other credit enhancement with respect to rate recovery bonds does not impair or negate the characterization of a transfer as a true sale.

(6) Any successor to a public utility pursuant to any bankruptcy, reorganization or other insolvency proceeding shall perform and satisfy all obligations of the public utility under an approved contract governing rate recovery bonds in the same manner and to the same extent as was required of the public utility before the proceeding, including, without limitation, billing, collecting and paying to the holders of the rate recovery bonds or their representatives revenues arising with respect to the rate recovery assets pledged to secure the rate recovery bonds.

(7) The granting, perfection and enforcement of security interests in rate recovery assets to secure rate recovery bonds are subject to ORS chapter 79, except that when a provision in ORS chapter 79 comes in conflict with a provision in this section, the provision in this section shall control.

(8) Except for enforcement permitted under the laws of another state, the laws of this state shall govern the creation, validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the creation or transfer of a security interest in a rate recovery asset.

SECTION 7. A rate recovery bond, as described under sections 1, 3, 4 and 6 of this 2023 Act, that is exempt under ORS 59.025 from ORS 59.049 and 59.055 is not a security for purposes of ORS 59.115, 59.135 or 59.137.

SECTION 8. ORS 757.415 is amended to read:

757.415. (1) Except as otherwise permitted by subsection (4) of this section, a public utility may issue stocks and bonds, notes and other evidences of indebtedness, certificates of beneficial interests in a trust and securities for the following purposes and no others:

(a) The acquisition of property, or the construction, completion, extension or improvement of its facilities.

(b) The improvement or maintenance of its service.

(c) The discharge or lawful refunding of its obligations.

(d) The reimbursement of money actually expended from income or from any other money in the treasury of the public utility not secured by or obtained from the issue of stocks or bonds, notes or other evidences of indebtedness, or securities of such public utility, for any of the purposes listed in paragraphs (a) to (c) of this subsection except the maintenance of service and replacements, in cases where the applicant has kept its accounts and vouchers for such expenditures in such manner as to enable the Public Utility Commission of Oregon to ascertain the amount of money so expended and the purposes for which such expenditures were made.

(e) The compliance with terms and conditions of options granted to its employees to purchase its stock, if the commission first finds that such terms and conditions are reasonable and in the public interest.

(f) The finance or refinance of bondable [*conservation investment*] **rate recovery expenditures** as described in [*ORS 757.455*] **section 4 of this 2023 Act**. Bonds, notes, certificates of beneficial interests in a trust and other evidences of indebtedness or ownership, issued for this purpose are [*conservation*] **rate recovery** bonds for the purposes of [*ORS 757.460*] **section 6 of this 2023 Act**. [*Conservation bonds may rely partly or wholly for repayment on conservation investment assets and revenues arising with respect to conservation investment assets.*]

(2) Before issuing such securities a public utility, in addition to the other requirements of law, shall secure from the commission upon application an order authorizing such issue, stating:

(a) The amount of the issue and the purposes to which the issue or the proceeds thereof are to be applied;

(b) In the opinion of the commission, the money, **costs and expenses**, property or labor to be procured, [or] paid for **or refinanced** by such issue reasonably is required for the purposes specified in the order and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility, and will not impair its ability to perform that service; and

(c) Except as otherwise permitted in the order in the case of bonds, notes or other evidences of indebtedness, such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

(3) This section and ORS 757.410 apply to demand notes but do not apply to the issuance or renewal of a note or evidence of indebtedness maturing not more than one year after date of such issue or renewal.

(4) Nothing in ORS 757.400 to 757.460 shall prevent issuance of stock to stockholders as a stock dividend if there has been secured from the commission an order:

(a) Finding that the stock dividend is compatible with the public interest;

(b) Authorizing such issue and a transfer of surplus to capital in an amount equal to the par or stated value of the stock so authorized; and

(c) Finding that a sum equal to the amount to be so transferred was expended for the purposes enumerated in subsection (1) of this section.

(5) [*Conservation*] **Rate recovery** bonds authorized pursuant to subsection [(1)] **(1)(f)** of this section may be issued directly by a public utility or through a finance subsidiary. [A] **For purposes of this subsection**, “finance subsidiary” means any corporation, limited liability company, company, association, trust or other entity [*that is*]:

(a)(A) **That is** beneficially owned, directly or indirectly, by a public utility; or,]

(B) In the case of a trust, for which a public utility or subsidiary thereof is the grantor; or

(b) **That is** unaffiliated with a public utility and acquires bondable [*conservation investment*] **rate recovery assets** directly or indirectly from a public utility in a transaction approved by the commission.

SECTION 9. ORS 757.425 is amended to read:

757.425. No provision of ORS 757.405 to 757.450 **or sections 1, 3, 4 and 6 of this 2023 Act**, and no deed or act done or performed under or in connection therewith, shall be held or construed to obligate the State of Oregon **or any agency of state government, as defined in ORS 174.111**, to pay or guarantee, in any manner whatsoever, any stock or bond, note or other evidence of indebtedness, authorized, issued or executed under the provisions of ORS 757.405 to 757.450 **or sections 1, 3, 4 and 6 of this 2023 Act**.

SECTION 10. ORS 59.025 is amended to read:

59.025. The following securities are exempt from ORS 59.049 and 59.055:

(1)(a) A security issued or guaranteed by the United States or a state, or by a political subdivision, agency or other instrumentality of the United States or a state.

(b) Any other security offered in connection with or as part of a security described in paragraph (a) of this subsection, if the security cannot be severed and sold separately from the security in paragraph (a) of this subsection.

(2) A security issued or guaranteed by a foreign government with which the United States is at the time of the sale maintaining diplomatic relations, or by a state, province or political subdivision of the foreign government that has the power of taxation or assessment, if the foreign government, state, province or political subdivision recognizes the security as a valid obligation.

(3) A security that represents an interest in or a direct obligation of, or is guaranteed by, a national bank, a federal savings and loan association, a federal credit union, a federal land bank or joint stock land bank or a national farm loan association.

(4) Any of the following securities:

(a) A security that, at the time the security is issued, is listed or approved for listing on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, the Pacific Stock Exchange or any other exchange that the Director of the Department of Consumer and Business Services recognizes by rule;

(b) A security that the NASDAQ Stock Market, NASDAQ Options Market or NASDAQ OMX Futures Exchange has designated or approved for designation at the time the security was issued;

(c) Any other security issued by a person or entity that issues a security listed or designated under paragraph (a) or (b) of this subsection, if the other security is of senior or substantially equal rank to the listed or designated security;

(d) A security issuable under rights or warrants listed or approved under paragraph (a), (b) or (c) of this subsection; or

(e) A warrant or right to purchase or subscribe to any security described in paragraph (a), (b), (c) or (d) of this subsection.

(5) A security that maintains a rating that the director approves in a recognized securities manual.

(6) A security that represents an interest in or a direct obligation of, and that has been or will be issued by, a bank, trust company, savings and loan association or credit union and that is subject to the examination, supervision and control of a regulatory agency of this state.

(7) Commercial paper issued, given or acquired in a bona fide way in the ordinary course of legitimate business, trade or commerce, if the commercial paper is not made the subject of a public offering.

(8) A security, the issuance of which the Public Utility Commission **authorizes**, supervises, regulates or controls, if the Public Utility Commission **directly or indirectly** supervises, regulates or controls the person or entity that issues the security.

(9) Stock or membership certificates that an agricultural cooperative corporation or irrigation association issues, if the agricultural cooperative corporation or irrigation association issues the stock or membership certificate as evidence of membership in the cooperative or association, as a patronage dividend or as evidence of a member's or a patron's respective interests in reserves or patronage dividends. This exemption does not apply to a cooperative or association that expects to engage in or is engaged in producing, processing or marketing forest products.

(10) Stock or membership certificates that a fishing cooperative corporation issues to members of the fishing cooperative corporation either for the purpose of showing membership or for the purpose of showing the members' respective interests in reserves or patronage dividends. For purposes of this subsection, a fishing cooperative corporation is an association of persons engaged commercially in harvesting, marketing or processing products of aquatic life from fresh and salt water, that is formed or operated under ORS chapter 62 with the purpose of commercially harvesting, marketing or processing such products or engaging in group bargaining with respect to the sale of such products.

(11) Stock or membership certificates issued by an association of consumers that is formed or operated under ORS chapter 62 with the purpose of providing groceries to the association's members, if the association issues the stock or certificates to members either for the purpose of showing membership in the association or for the purpose of showing the members' respective interests in patronage dividends or reserves. For purposes of the exemption under this subsection:

(a) The price of stock or a membership certificate may not exceed \$300.

(b) The benefits must be limited to discounts on purchases or patronage dividends, or any combination of discounts and dividends.

(c) The association may issue only one stock or membership certificate to an individual.

(12) Subject to conditions that the director adopts by rule, stock or membership certificates that a renewable energy cooperative corporation issues to members of the cooperative corporation, if the cooperative corporation issues the stock or certificates to members either to show membership in the cooperative corporation or to show the members' respective interests in or entitlement to assets,

reserves or dividends. For the purpose of this subsection, a renewable energy cooperative corporation is an association of persons that is organized as a cooperative corporation under ORS chapter 62 with the purpose of developing and operating facilities to generate electricity from renewable energy resources, as defined in ORS 757.600 (27)(a), (c) and (d), or from a type of energy listed in ORS 469A.025 (1)(c).

(13) Any security issued in connection with an employee stock purchase, savings, pension, profit sharing or similar employee benefit plan, provided that:

(a) The plan meets the requirements for qualification under section 401 of the Internal Revenue Code of 1986; and

(b) The terms of the plan are fair, just and equitable to employees under rules of the director.

(14) Any security issued by a person that is:

(a) Organized and operated exclusively for a religious, educational, benevolent, fraternal, charitable or reformatory purpose and not for pecuniary profit;

(b) Organized or constituted so that the person's net earnings do not inure to the benefit of any person, private stockholder, or individual; and

(c) Designated by rule of the director.

(15) Any other security the director exempts by rule.

SECTION 11. ORS 757.445 is amended to read:

757.445. [No] **A** public utility [shall] **may not**, directly or indirectly, issue or cause to be issued any stock or bond, note or other evidence of indebtedness, in nonconformity with the order of the Public Utility Commission authorizing the same or contrary to the provisions of ORS 757.400 to 757.460, or of the Constitution of this state, or apply the proceeds from the sale thereof, or any part thereof, to any purpose other than the purposes specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount in the order authorized for such purpose.

SECTION 12. ORS 757.450 is amended to read:

757.450. [No person shall:]

A person may not:

(1) Knowingly authorize, direct, aid in, issue or execute, or cause to be issued or executed, any stock or bond, note or other evidence of indebtedness, in nonconformity with the order of the Public Utility Commission authorizing the same, or contrary to the provisions of ORS 757.400 to 757.460 or of the Constitution of this state.

(2) In any proceeding before the commission, knowingly make any false statement or representation or with knowledge of its falsity file or cause to be filed with the commission any false statement or representation which may tend in any way to influence the commission to make an order authorizing the issue of any stock or bond, note or other evidence of indebtedness, or which results in procuring from the commission the making of any such order.

(3) With knowledge that any false statement or representation was made to the commission in any proceeding tending in any way to influence the commission to make such order, issue, execute or negotiate, or cause to be issued, executed or negotiated, any stock or bond, note or other evidence of indebtedness.

(4) Directly or indirectly, knowingly apply, or cause or assist to be applied, the proceeds, or any part thereof, from the sale of any stock or bond, note or other evidence of indebtedness, to any purpose not specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount authorized for such purpose.

(5) With knowledge that any stock or bond, note or other evidence of indebtedness, has been issued or executed in violation of ORS 757.400 to 757.460, negotiate, or cause the same to be negotiated.

SECTION 13. Sections 1, 3, 4 and 6 of this 2023 Act, the amendments to ORS 59.025, 757.415, 757.425, 757.445 and 757.450 by sections 8 to 12 of this 2023 Act and the repeal of ORS 757.455 and 757.460 by sections 2 and 5 of this 2023 Act apply to costs and expenses incurred by a public utility before, on and after the effective date of this 2023 Act.

SECTION 14. If any provision of sections 1, 3, 4 and 6 of this 2023 Act or the amendments to ORS 59.025, 757.415, 757.425, 757.445 and 757.450 by sections 8 to 12 of this 2023 Act is determined to be invalid, or is invalidated, superseded, replaced, repealed or expired, such determination or occurrence does not affect the validity of any action allowed under sections 1, 3, 4 and 6 of this 2023 Act or the amendments to ORS 59.025, 757.415, 757.425, 757.445 and 757.450 by sections 8 to 12 of this 2023 Act and taken in good faith and pursuant to a financing order issued prior to such determination or occurrence.

SECTION 15. This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on its passage.

Passed by House April 13, 2023

Received by Governor:

Repassed by House June 23, 2023

.....M.,....., 2023

Approved:

.....
Timothy G. Sekerak, Chief Clerk of House

.....M.,....., 2023

.....
Dan Rayfield, Speaker of House

.....
Tina Kotek, Governor

Passed by Senate June 21, 2023

Filed in Office of Secretary of State:

.....M.,....., 2023

.....
Rob Wagner, President of Senate

.....
Secretary of State