

HB 3143-1
(LC 1773)
3/27/23 (CPA/ps)

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

**PROPOSED AMENDMENTS TO
HOUSE BILL 3143**

1 On page 1 of the printed bill, line 3, after “ORS” delete the rest of the
2 line and insert “59.025, 757.415, 757.425, 757.445; 757.450; repealing ORS
3 757.455 and 757.460; and de-”.

4 Delete lines 17 through 26 and delete pages 2 through 7 and insert:

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

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

11 **“(2) ‘Bond’ includes bonds, notes, certificates of beneficial interests**
12 **in a trust or other evidence of indebtedness.**

13 **“(3) ‘Bondholder’ means a holder or owner of a rate recovery bond.**

14 **“(4) ‘Finance subsidiary’ means an assignee at the time rate recov-**
15 **ery bonds are issued:**

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

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

20 **“(b) That is unaffiliated with a public utility and acquires bondable**
21 **rate recovery assets from a public utility in a transaction or under an**

1 agreement that is approved by the Public Utility Commission.

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

5 “(a) The costs of issuing, serving, managing, repaying or refinanc-
6 ing rate recovery bonds, including any fees, expenses or charges in-
7 curred and the costs of any activities performed in connection with the
8 rate recovery bonds, including:

9 “(A) Information technology programming;

10 “(B) Obtaining a financing order;

11 “(C) Serving, accounting or auditing;

12 “(D) Services related to trustees;

13 “(E) Legal services;

14 “(F) Consulting;

15 “(G) Services related to financial and structuring advisors;

16 “(H) Administration;

17 “(I) Placement and underwriting;

18 “(J) Services related to independent directors and managers;

19 “(K) Services related to rating agencies;

20 “(L) Stock exchange listing and compliance;

21 “(M) Securities registration and filing; and

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

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

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

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

4 “(e) The Public Utility Commission’s costs in performing the
5 commission’s duties related to rate recovery bonds that are recovera-
6 ble by the commission under ORS 756.310.

7 “(6) ‘Financing order’ means an order issued by the Public Utility
8 Commission that authorizes one or more the following:

9 “(a) The recovery of rate recovery expenditures and financing costs;

10 “(b) The creation of rate recovery assets;

11 “(c) The issuance of rate recovery bonds;

12 “(d) The imposition, collection and periodic adjustment of rate re-
13 covery charges; or

14 “(e) The sale, assignment or transfer of rate recovery assets to an
15 assignee.

16 “(7) ‘Financing party’ includes:

17 “(a) Bondholders, trustees, agents and secured parties related to
18 rate recovery bonds;

19 “(b) A person acting for the benefit of bondholders, trustees, agents
20 or secured parties; and

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

23 “(8) ‘Public utility customer’ means:

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

26 “(b) For a natural gas utility, the end use consumer served by the
27 natural gas utility, including those served by the natural gas utility
28 under ORS 757.516, regardless of whether the end use consumer pur-
29 chases natural gas from the natural gas utility.

30 “(9) ‘Rate recovery asset’ means a right to recover from customers

1 rate recovery expenditures and associated costs and expenses approved
2 in a financing order, including the right to:

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

6 “(b) All claims, accounts, revenues, payments, collections, moneys
7 or proceeds arising from the rights and interest specified in a financ-
8 ing order, regardless of whether the claims, accounts, revenues, pay-
9 ments, collections, moneys or proceeds arising from the rights and
10 interest specified in the financing order are commingled with other
11 claims, accounts, revenues, payments, collections, moneys or pro-
12 ceeds.

13 “(10) ‘Rate recovery charge’ means charges to public utility cus-
14 tomers authorized by the Public Utility Commission to recover rate
15 recovery expenditures and financing costs and to be used to pay, repay
16 or refinance rate recovery bonds.

17 “(11) ‘Rate recovery expenditures’ means costs and expenses in-
18 curred or to be incurred by a public utility associated with:

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

26 “(b) An energy conservation program that provides loans and cash
27 payments to public utility customers for the installation of energy
28 conservation measures funded by the public utility including, but not
29 limited to, the costs or expenditures for specific acquisition program
30 development, promotion and labor costs and associated general super-

1 vision, rents, leases and overheads.

2 “(12) ‘Secured party’ means a financing party that has been granted
3 a security interest in rate recovery assets.

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

6 “SECTION 2. ORS 757.455 is repealed and sections 3 and 4 of this
7 2023 Act are enacted in lieu thereof.

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

12 “(2) To carry out the policy described in subsection (1) of this sec-
13 tion, the State of Oregon and all public bodies, as defined in ORS
14 174.109:

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

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

23 “(A) Rate recovery assets;

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

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

28 “(3) The pledge and agreement described under subsection (2)(b) of
29 this section includes the pledge and agreement not to reduce, alter or
30 impair rate recovery assets, rate recovery bonds or the security for

1 rate recovery bonds, or rate recovery charges or the collection of rate
2 recovery charges by taking any of the following actions:

3 “(a) Altering the provisions of this section or section 1, 4 or 6 of this
4 2023 Act to the extent that those provisions authorize the Public Util-
5 ity Commission to issue financing orders that:

6 “(A) Create rate recovery assets;

7 “(B) Establish rate recovery charges that may not be avoided by
8 public utility customers; or

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

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

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

19 “(4) A public utility or financing subsidiary that issues rate recov-
20 ery bonds may include the pledge and provisions of this section in the
21 bonds and related documentation.

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

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

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

1 **“(B) Financing or refinancing the rate recovery expenditures**
2 **through the issuance of rate recovery bonds is likely to be more fa-**
3 **vorable to public utility customers for the recovery of rate recovery**
4 **expenditures as compared to other methods; and**

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

9 **“(c) The commission shall issue an order within 180 days of an ap-**
10 **plication approving or denying the application. If the commission ap-**
11 **proves the application, the commission shall issue a financing order.**

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

15 **“(b) In specifying the amount for rate recovery expenditures asso-**
16 **ciated with an event described in section 1 (11)(a) of this 2023 Act, net**
17 **of appropriate adjustments as determined by the commission to be**
18 **reasonable, the commission may include, but is not limited to includ-**
19 **ing, the following rate recovery expenditures:**

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

22 **“(B) Lost revenue associated with the event;**

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

27 **“(D) Carrying costs or charges.**

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

30 **“(a) Confirmation of the existence of recoverable rate recovery ex-**

1 **penditures and authorization to recover rate recovery expenditures**
2 **and associated financing costs, including the maximum principal**
3 **amount of bondable rate recovery expenditures and financing costs**
4 **that may be recovered through securitization;**

5 **“(b) Authorization for the creation of rate recovery assets and im-**
6 **position of rate recovery charges that allow for the recovery of rate**
7 **recovery expenditures, as determined by the commission, and associ-**
8 **ated financing costs;**

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

14 **“(d) A methodology for:**

15 **“(A) Allocating rate recovery charges between the different classes**
16 **of public utility customers that is consistent with cost causation and**
17 **rate design principles and statutory or regulatory requirements; and**

18 **“(B) Adjusting rate recovery charges as necessary to ensure timely**
19 **payment on, and payment in full of, the rate recovery bonds and as-**
20 **sociated financing costs or in response to changes to applicable cus-**
21 **tomers, service territories or collection rates;**

22 **“(e) Authorization for the public utility to issue one or more series**
23 **of rate recovery bonds with flexibility for the public utility to establish**
24 **the terms and conditions of the rate recovery bonds, including repay-**
25 **ment schedules, initial interest rates and initial financing costs;**

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

29 **“(g) Authorization for the bond documentation and ancillary docu-**
30 **ments related to the rate recovery bonds, including servicing ar-**

1 rangements for the rate recovery charges, without requiring the
2 authorization to be on the final forms of the documents;

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

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

14 “(j) A date, not earlier than one year from the date that the fi-
15 nancing order becomes final, on which the authority to issue rate re-
16 covery bonds granted in the financing order expires;

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

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

22 “(4) Rate recovery charges authorized by a financing order shall be
23 collected through the rates or charges paid by, and may not be avoided
24 by, the public utility customers located within the public utility’s al-
25 located service territory, as the territory existed on the date of the
26 financing order or, if the financing order provides, as such service
27 territory may be expanded, even if the public utility customer receives
28 utility service from a successor or assignee of the public utility or
29 from another public utility operating in the service territory.

30 “(5)(a) Rate recovery assets, including rate recovery charges, and

1 the rights of public utilities, assignees, bondholders and financing
2 parties, established by a financing order issued under this section, are
3 irrevocable and unchangeable, except as provided in the financing or-
4 der, until all principal, interest, premium, interest and amounts due
5 on the rate recovery bonds and financing costs are paid in full.

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

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

12 “(B) Determine that the rates or revenues authorized under the fi-
13 nancing order are unjust or unreasonable;

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

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

18 “(E) When setting other rates or charges for the public utility or
19 taking other actions pursuant to the commission’s authority, consider
20 the rate recovery bonds as debt of the public utility, the rate recovery
21 assets to be revenue for the public utility or the rate recovery ex-
22 penditures to be costs of the public utility.

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

24 “(a) Apply to the commission for a financing order designating all
25 or part of rate recovery expenditures as bondable rate recovery ex-
26 penditures; or

27 “(b) Finance or refinance rate recovery expenditures that the com-
28 mission has designated as bondable rate recovery expenditures.

29 “(7) Jurisdiction for review of a financing order issued under this
30 section shall be as provided for orders in contested cases pursuant to

1 **ORS 183.482, except that a petition for rehearing or reconsideration is**
2 **not allowed. If a petition is not filed with the Court of Appeals within**
3 **60 days following the date of issuance of a financing order, the order**
4 **becomes a final and irrevocable action of the commission and the**
5 **State of Oregon and is not subject to administrative or judicial chal-**
6 **lenge.**

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

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

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

17 **“(A) The secured party has given value; and**

18 **“(B) The debtor has signed a security agreement granting the se-**
19 **cured party a security interest in the rate recovery assets.**

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

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

24 **“(B) A financing statement has been filed in accordance with the**
25 **requirements of ORS chapter 79 that identifies the debtor as ‘debtor’**
26 **and the rate recovery assets granted as security as the ‘collateral,’ and**
27 **contains a description in the financing statement that refers to the**
28 **Public Utility Commission’s financing order creating the rate recovery**
29 **assets. The financing statement shall be deemed sufficient under ORS**
30 **chapter 79 and all other relevant law for identifying the rate recovery**

1 assets granted as security.

2 “(d) A perfected security interest in rate recovery assets is a con-
3 tinuously perfected security interest, whether or not the related reve-
4 nues have accrued. Rate recovery assets constitute property for the
5 purposes of contracts securing the rate recovery bonds, whether or not
6 the related revenues have accrued. Multiple security interests in the
7 same rate recovery assets shall rank according to priority in time of
8 perfection.

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

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

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

16 “(2)(a) A transfer of rate recovery assets to an assignee is perfected
17 against all third parties if a notice of the transfer, by means of a fi-
18 nancial statement:

19 “(A) Is filed in accordance with the requirements of ORS chapter
20 79;

21 “(B) Identifies the transferor as ‘debtor,’ the assignee as ‘secured
22 party,’ and the rate recovery asset as ‘collateral’; and

23 “(C) Contains a description that refers to the commission’s financ-
24 ing order that created the rate recovery assets.

25 “(b) A notice of transfer that is filed in accordance with the re-
26 quirements under paragraph (a) of this subsection shall be deemed
27 sufficient under ORS chapter 79 and all other relevant laws for iden-
28 tifying the rate recovery assets and for providing notice that the rate
29 recovery assets have been transferred to the assignee.

30 “(c) A transfer is perfected against third parties on the date a no-

1 **tice of transfer is filed.**

2 **“(d) A transfer of rate recovery assets to a financing subsidiary that**
3 **is perfected under this subsection is free and clear of all claims, se-**
4 **curity interests, liens and encumbrances of the transferring public**
5 **utility, except for any prior security interest perfected under sub-**
6 **section (1) of this section or transfer perfected under this subsection.**

7 **“(e) The priority of a transfer that is perfected under this sub-**
8 **section is not adversely affected by:**

9 **“(A) Any later modification of the financing order or rate recovery**
10 **assets; or**

11 **“(B) The commingling of proceeds of rate recovery assets with other**
12 **moneys.**

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

18 **“(b) Proceeds from rate recovery assets shall be held in trust for**
19 **an assignee or secured party until the proceeds or the proceeds and**
20 **rate recovery assets have been transferred to the assignee or secured**
21 **party.**

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

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

29 **“(b) If a public utility or finance subsidiary defaults on a required**
30 **payment arising from rate recovery bonds, a secured party or secured**

1 party's representatives may apply to the commission for relief. Upon
2 application by a secured party or secured party's representatives, the
3 commission shall order, without limiting other remedies of the secured
4 party or secured party's representatives, the sequestration and pay-
5 ment to the secured party or secured party's representatives of the
6 proceeds of the rate recovery assets.

7 “(c) The interest of an assignee or financing party in rate recovery
8 assets is not subject to setoff, counterclaim, surcharge or defense by
9 the public utility or any other person in connection with a bankruptcy,
10 reorganization or insolvency proceeding. Any surplus in excess of
11 amounts necessary to pay principal, interest, premium, if any, and
12 other amounts due on the rate recovery bonds and associated financ-
13 ing costs, including enforcement costs, arising under the security
14 agreement shall be remitted to the debtor or transferor.

15 “(d) Notwithstanding any bankruptcy, reorganization or other
16 insolvency proceeding with respect to the debtor or transferor of the
17 rate recovery assets, the commission's financing order shall remain in
18 full force and effect.

19 “(5) A transfer of rate recovery assets by a public utility to a fi-
20 nance subsidiary or other assignee that the parties have expressly
21 stated in the governing documentation to be a sale or other absolute
22 transfer, in a transaction approved in a financing order, shall be
23 treated as a true sale and not as a pledge or other financing of the rate
24 recovery assets. According the holders of rate recovery bonds a pre-
25 ferred right to revenues of the public utility or the provision by the
26 public utility of other credit enhancement with respect to rate recov-
27 ery bonds does not impair or negate the characterization of a transfer
28 as a true sale.

29 “(6) Any successor to a public utility pursuant to any bankruptcy,
30 reorganization or other insolvency proceeding shall perform and sat-

1 isfy all obligations of the public utility under an approved contract
2 governing rate recovery bonds in the same manner and to the same
3 extent as was required of the public utility before the proceeding, in-
4 cluding, without limitation, collecting and paying to the holders of the
5 rate recovery bonds or their representatives revenues arising with re-
6 spect to the rate recovery assets pledged to secure the rate recovery
7 bonds.

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

13 “(8) Except when a choice of law rule of this state applies or for
14 enforcement permitted under the laws of another state, the laws of
15 this state shall govern the creation, validity, enforceability, attach-
16 ment, perfection, priority and exercise of remedies with respect to the
17 creation or transfer of a security interest in a rate recovery asset.

18 “SECTION 7. A rate recovery bond, as described under sections 1,
19 3, 4 and 6 of this 2023 Act, that is exempt under ORS 59.025 from ORS
20 59.049 and 59.055 is not a security for purposes of ORS 59.115, 59.135 or
21 59.137.

22 “SECTION 8. ORS 757.415 is amended to read:

23 “757.415. (1) Except as otherwise permitted by subsection (4) of this sec-
24 tion, a public utility may issue stocks and bonds, notes and other evidences
25 of indebtedness, certificates of beneficial interests in a trust and securities
26 for the following purposes and no others:

27 “(a) The acquisition of property, or the construction, completion, exten-
28 sion or improvement of its facilities.

29 “(b) The improvement or maintenance of its service.

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

1 “(d) The reimbursement of money actually expended from income or from
2 any other money in the treasury of the public utility not secured by or ob-
3 tained from the issue of stocks or bonds, notes or other evidences of indebt-
4 edness, or securities of such public utility, for any of the purposes listed in
5 paragraphs (a) to (c) of this subsection except the maintenance of service and
6 replacements, in cases where the applicant has kept its accounts and
7 vouchers for such expenditures in such manner as to enable the Public
8 Utility Commission of Oregon to ascertain the amount of money so expended
9 and the purposes for which such expenditures were made.

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

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

21 “(2) Before issuing such securities a public utility, in addition to the
22 other requirements of law, shall secure from the commission upon applica-
23 tion an order authorizing such issue, stating:

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

26 “(b) In the opinion of the commission, the money, **costs and expenses**,
27 property or labor to be procured, [*or*] paid for **or refinanced** by such issue
28 reasonably is required for the purposes specified in the order and compatible
29 with the public interest, which is necessary or appropriate for or consistent
30 with the proper performance by the applicant of service as a public utility,

1 and will not impair its ability to perform that service; and

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

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

8 “(4) Nothing in ORS 757.400 to 757.460 shall prevent issuance of stock to
9 stockholders as a stock dividend if there has been secured from the commis-
10 sion an order:

11 “(a) Finding that the stock dividend is compatible with the public inter-
12 est;

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

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

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

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

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

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

29 **“SECTION 9.** ORS 757.425 is amended to read:

30 “757.425. No provision of ORS 757.405 to 757.450 **or sections 1, 3, 4 and**

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

7 **“SECTION 10.** ORS 59.025 is amended to read:

8 “59.025. The following securities are exempt from ORS 59.049 and 59.055:

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

12 “(b) Any other security offered in connection with or as part of a security
13 described in paragraph (a) of this subsection, if the security cannot be sev-
14 ered and sold separately from the security in paragraph (a) of this sub-
15 section.

16 “(2) A security issued or guaranteed by a foreign government with which
17 the United States is at the time of the sale maintaining diplomatic relations,
18 or by a state, province or political subdivision of the foreign government that
19 has the power of taxation or assessment, if the foreign government, state,
20 province or political subdivision recognizes the security as a valid obli-
21 gation.

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

26 “(4) Any of the following securities:

27 “(a) A security that, at the time the security is issued, is listed or ap-
28 proved for listing on the New York Stock Exchange, the American Stock
29 Exchange, the Midwest Stock Exchange, the Pacific Stock Exchange or any
30 other exchange that the Director of the Department of Consumer and Busi-

1 ness Services recognizes by rule;

2 “(b) A security that the NASDAQ Stock Market, NASDAQ Options Mar-
3 ket or NASDAQ OMX Futures Exchange has designated or approved for
4 designation at the time the security was issued;

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

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

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

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

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

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

22 “(8) A security, the issuance of which the Public Utility Commission
23 **authorizes**, supervises, regulates or controls, if the Public Utility Commis-
24 sion **directly or indirectly** supervises, regulates or controls the person or
25 entity that issues the security.

26 “(9) Stock or membership certificates that an agricultural cooperative
27 corporation or irrigation association issues, if the agricultural cooperative
28 corporation or irrigation association issues the stock or membership certifi-
29 cate as evidence of membership in the cooperative or association, as a
30 patronage dividend or as evidence of a member’s or a patron’s respective

1 interests in reserves or patronage dividends. This exemption does not apply
2 to a cooperative or association that expects to engage in or is engaged in
3 producing, processing or marketing forest products.

4 “(10) Stock or membership certificates that a fishing cooperative corpo-
5 ration issues to members of the fishing cooperative corporation either for the
6 purpose of showing membership or for the purpose of showing the members’
7 respective interests in reserves or patronage dividends. For purposes of this
8 subsection, a fishing cooperative corporation is an association of persons
9 engaged commercially in harvesting, marketing or processing products of
10 aquatic life from fresh and salt water, that is formed or operated under ORS
11 chapter 62 with the purpose of commercially harvesting, marketing or pro-
12 cessing such products or engaging in group bargaining with respect to the
13 sale of such products.

14 “(11) Stock or membership certificates issued by an association of con-
15 sumers that is formed or operated under ORS chapter 62 with the purpose
16 of providing groceries to the association’s members, if the association issues
17 the stock or certificates to members either for the purpose of showing mem-
18 bership in the association or for the purpose of showing the members’ re-
19 spective interests in patronage dividends or reserves. For purposes of the
20 exemption under this subsection:

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

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

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

26 “(12) Subject to conditions that the director adopts by rule, stock or
27 membership certificates that a renewable energy cooperative corporation is-
28 sues to members of the cooperative corporation, if the cooperative corpo-
29 ration issues the stock or certificates to members either to show membership
30 in the cooperative corporation or to show the members’ respective interests

1 in or entitlement to assets, reserves or dividends. For the purpose of this
2 subsection, a renewable energy cooperative corporation is an association of
3 persons that is organized as a cooperative corporation under ORS chapter
4 62 with the purpose of developing and operating facilities to generate elec-
5 tricity from renewable energy resources, as defined in ORS 757.600 (27)(a),
6 (c) and (d), or from a type of energy listed in ORS 469A.025 (1)(c).

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

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

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

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

15 “(a) Organized and operated exclusively for a religious, educational, be-
16 nevolent, fraternal, charitable or reformatory purpose and not for pecuniary
17 profit;

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

20 “(c) Designated by rule of the director.

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

22 “**SECTION 11.** ORS 757.445 is amended to read:

23 “757.445. [No] **A** public utility [*shall*] **may not**, directly or indirectly, is-
24 sue or cause to be issued any stock or bond, note or other evidence of
25 indebtedness, in nonconformity with the order of the Public Utility Com-
26 mission authorizing the same or contrary to the provisions of ORS 757.400
27 to 757.460, or of the Constitution of this state, or apply the proceeds from
28 the sale thereof, or any part thereof, to any purpose other than the purposes
29 specified in the commission’s order, or to any purpose specified in the
30 commission’s order in excess of the amount in the order authorized for such

1 purpose.

2 **“SECTION 12.** ORS 757.450 is amended to read:

3 “757.450. [*No person shall:*]

4 **“A person may not:**

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

10 “(2) In any proceeding before the commission, knowingly make any false
11 statement or representation or with knowledge of its falsity file or cause to
12 be filed with the commission any false statement or representation which
13 may tend in any way to influence the commission to make an order author-
14 izing the issue of any stock or bond, note or other evidence of indebtedness,
15 or which results in procuring from the commission the making of any such
16 order.

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

22 “(4) Directly or indirectly, knowingly apply, or cause or assist to be ap-
23 plied, the proceeds, or any part thereof, from the sale of any stock or bond,
24 note or other evidence of indebtedness, to any purpose not specified in the
25 commission’s order, or to any purpose specified in the commission’s order in
26 excess of the amount authorized for such purpose.

27 “(5) With knowledge that any stock or bond, note or other evidence of
28 indebtedness, has been issued or executed in violation of ORS 757.400 to
29 757.460, negotiate, or cause the same to be negotiated.

30 **“SECTION 13. Sections 1, 3, 4 and 6 of this 2023 Act, the amend-**

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

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

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

18
