Chapter 288

1971 REPLACEMENT PART

Public Borrowing and Bonds Generally

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FISCAL AGENCY IN NEW YORK FOR PUBLIC BOND PAYMENTS

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

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

(2) "Subdivision" means a municipal corporation, quasi-municipal corporation or civil subdivision in this state.

288.020 Designating banking institution as fiscal agency; qualifications; duration. (1) The Governor may designate some well-known and responsible bank or trust company in the City and State of New York having a paid-up capital and surplus of not less than $5 million as fiscal agency for payment of the bonds and coupons issued by this state or by any subdivision, that are by their terms made payable in the City and State of New York. The appointment when so made shall continue for a period of four years unless sooner revoked by the Governor for valid and sufficient reasons.

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

(3) If no such bank or trust company is willing to accept appointment as fiscal agency, or if the Governor considers unsatisfactory the terms under which such a bank or trust company is willing so to act, the bonds and bond interest coupons payable at the fiscal agency in the City and State of New York shall thereupon become payable at the State Treasury or at the office of the treasurer or fiscal officer of the subdivision concerned, as the case may be.

288.030 Notice of appointment of agent; bonds and coupons payable at agency. The State Treasurer shall, immediately after the establishment of the fiscal agency, publish a notice thereof in some financial newspaper of general circulation in the City and State of New York, for two weeks. Thereafter all bonds and coupons of this state or of any subdivision therein which by their terms are payable in New York City shall be paid at the fiscal agency.

288.040 Remitting funds by state and local treasurers to pay bonds and coupons. Unless otherwise provided by law, the State Treasurer and the treasurer or other fiscal officer of every affected subdivision shall remit to the fiscal agency, before the maturity of any bonds or coupons payable at the fiscal agency in New York City, sufficient moneys out of any funds in the hands of any such treasurer or other fiscal officer applicable to such purpose, for the redemption of such bonds or coupons.

[Amended by 1967 c.220 §1]

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

288.060 Return of canceled bonds and coupons. After payment of the bonds or coupons for which the funds were remitted, the bonds or coupons shall be canceled and returned to the officer from whom the funds were received, not less often than quarterly by January 15, April 15, July 15 and October 15 of each year.

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

288.080 Fiscal agency to furnish statements. The fiscal agency shall render on the first business day in January, April, July and October of each year, to the State Treasurer for the state account and to each fiscal officer concerned, for the account of the subdivision of which he is such officer, an accurate statement showing the daily balances of the money on deposit for the quarter next preceding. Like statements shall be furnished, when requested in writing by the Governor or State Treasurer, by successors to fiscal officers concerned, by auditors duly authorized to examine the accounts of the State Treasurer or of such fiscal officers, or by their legal representatives.

288.090 Postage and express costs. Postage and express costs shall be proper

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

288.100 Certain bond issues not affected. Nothing in ORS 288.010 to 288.110 shall be construed to affect any bond issues existing on May 20, 1911, or on February 17, 1943, that by their provisions are made payable at a fiscal agency in the City of New York designated before February 17, 1943. However, if desired by the holder, such bond issues and the interest thereon may be paid at the regular fiscal agency appointed in accordance with ORS 288.020.

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

BROKERS' COMMISSIONS

288.310 Definitions for ORS 288.310 and 288.320. As used in ORS 288.310 and 288.320, unless the context otherwise requires:

(1) "Subdivision" means any municipal corporation or civil subdivision.

(2) "Broker" means any person, firm, agent, factor, intermediary, partnership, corporation, association, bond house, stockbroker or bond broker.

(3) "Commission" means commissions, percentage fees, brokerage, remuneration or other charges, but does not include a fixed noncontingent fee.

(4) "Obligations" means bonds, notes, warrants or other obligations of the state or a subdivision.

[Formerly 287.702; amended by 1959 c.213 §1]

288.320 Brokers' commissions prohibited. (1) Neither the state nor any subdivision, nor any officer or agent thereof, shall pay, directly or indirectly, any commission to any broker for preparing, supervising or handling the proceedings of, or for financing or underwriting the sale of, or for acting in an advisory capacity in connection with the issuance or proposed issuance or sale of the obligations of the state or a subdivision.

(2) Nothing herein contained shall prevent the state or any subdivision from paying a reasonable fixed noncontingent fee for financial programming and marketing assistance based on the value of the service rendered in connection with the issuance or proposed issuance or sale of the obligations of the state or of a subdivision.

(3) Nothing contained in section 2 shall prohibit the state or any subdivision from entering into a bona fide agreement to pay, nor from paying, reasonable attorneys' fees to duly licensed attorneys who are not also brokers and to them only, without distribution or division with any broker, as actual compensation for furnishing legal advice to the state or the subdivision, or in settlement of opposing attorneys' fees arising from claims or litigation against the state or the subdivision, or for actual legal work performed in the preparation of the proceedings relating to issues of the obligations, or for the examination of transcripts of proceedings relating thereto, or for the furnishing of opinions as to the regularity of such proceedings or as to the validity of such obligations.

[Formerly 287.704; amended by 1959 c.213 §2]

Note: No substitution of a specific ORS section number for the words "section 2" and "herein" has been made by the Legislative Counsel in ORS 288.320.

PAYMENT OR REISSUANCE OF LOST, MUTILATED OR DESTROYED EVIDENCE OF INDEBTEDNESS

288.410 Definitions for ORS 288.410 to 288.460. As used in ORS 288.410 to 288.460, unless the context requires otherwise:

(1) "Evidence of indebtedness" includes interest coupons originally attached to bonds issued by an issuer even though detached therefrom subsequent to the date on which such bonds were issued.

(2) "Duplicate" means a duplicate of an instrument.

(3) "Governing body" means the person, board, commission, council or other body authorized to direct the issuance of instruments for the issuer.

(4) "Indemnity bond" means an undertaking conditioned that the asserted owner of an instrument, as principal, will protect the issuer and the paying officer against loss or liability resulting from any demand or payment of the principal of or interest on an instrument and that such asserted owner will surrender such instrument to the paying officer if it comes into his possession.

(5) "Instrument" means any lost, mutilated or destroyed evidence of indebtedness of an issuer, other than warrants or checks.

(6) "Issuer" means the state, county, municipality, district or civil subdivision which has issued an instrument.

(7) "Lost" means lost or stolen for a length of time and under circumstances that indicate that the instrument has been destroyed or irrevocably lost, that it is not held by any person as his own property and that it will not be the basis of a claim against the issuer.

(8) "Mutilated" means defacement of an instrument to the extent that its negotiation may be impaired.

(9) "Paying officer" means the public officer, other than a fiscal or paying agent, to whom instruments may be presented for payment.

[1959 c.410 §1]

288.420 Payment of matured instrument that has been lost, mutilated or destroyed. (1) The paying officer shall pay the principal of or interest on any instrument at or after maturity when, except as provided in subsections (2) and (3) of this section, the asserted owner of such instrument:

(a) Submits a satisfactory affidavit describing the instrument and the circumstances surrounding his acquisition of such instrument and giving a detailed statement of the circumstances surrounding its loss, mutilation or destruction; and

(b) Surrenders the instrument, if mutilated and in his possession; and

(c) Furnishes an indemnity bond executed by two or more sureties satisfactory to the paying officer and qualifying as in the case of sureties for bail for twice the face amount of the instrument plus interest due thereon; or

(d) Furnishes an indemnity bond executed by a surety company licensed to do business in the state for the face amount of the instrument plus interest due thereon.

(2) If such asserted owner does not have personal knowledge of the information which must be contained in the affidavit required under paragraph (a) of subsection (1) of this section, the person having such personal knowledge may make the affidavit.

(3) If the face amount of an instrument plus interest due thereon is $1,000 or more, a surety company licensed to do business in the state must execute the indemnity bond required under subsection (1) of this section.

[1959 c.410 §2]

288.430 Issuance of duplicate for instrument that has been lost, mutilated or destroyed. (1) If an instrument has not yet matured, the governing body of the issuer shall direct the appropriate officer to execute and deliver a duplicate to the asserted owner of such instrument when, except as provided in subsection (2) of this section, such asserted owner:

(a) Submits a satisfactory affidavit describing the instrument and the circumstances surrounding his acquisition of such instrument and giving a detailed statement of the circumstances surrounding its loss, mutilation or destruction; and

(b) Surrenders the instrument, if mutilated and in his possession; and

(c) Furnishes an indemnity bond executed by a surety company licensed to do business in the state for the face amount of the instrument plus interest due and to become due thereon; and

(d) Deposits a sum sufficient to pay the expenses of issuing a duplicate with an appropriate officer of the issuer.

(2) If the asserted owner does not have personal knowledge of the information which must be contained in the affidavit required under paragraph (a) of subsection (1) of this section, the person having such personal knowledge may make the affidavit.

[1959 c.410 §3]

288.440 Form of duplicate instrument. If any duplicate be issued, it shall be in the same form and amount and bear the same serial number, date of issue and date of maturity as the original instrument. If the instrument be a bond with interest coupons attached, only interest coupons that have not matured under the terms of the original instrument as of the date the duplicate is issued shall be attached to the duplicate. The officer issuing the duplicate shall indorse the word "DUPLICATE" and the date of its issuance upon its face and upon the face of any interest coupon attached thereto. The

officer issuing the duplicate shall sign the duplicate on behalf of the issuer.
[1959 c.410 §6]

288.450 Waiver of requirement of indemnity bond. The paying officer may waive the requirement of an indemnity bond as imposed by ORS 288.420 and the governing body may waive such requirement as imposed by ORS 288.430 when:

(1) The asserted owner of the instrument furnishes an undertaking for the face amount of such instrument plus all interest due and to become due thereon to protect the issuer and the paying officer from loss or liability resulting from any demand or payment of the principal of or interest on such instrument; and either

(2) The asserted owner surrenders a mutilated instrument that is so complete that any missing portion thereof could not form the basis of a valid claim against the issuer; or

(3) The asserted owner of the instrument is the state in its individual or fiduciary capacity or any county, municipality, district or civil subdivision which is not in default on the payment of any of its outstanding obligations.
[1959 c.410 §4]

288.460 Petition to circuit court; court order requiring payment of instrument or issuance of duplicate. If any paying officer refuses to pay or if any governing body refuses to direct the issuance of a duplicate, the asserted owner of an instrument may petition any circuit court for an order requiring the paying officer or governing body to show cause why he or it should not be required to pay such instrument in accordance with its terms or direct the issuance of a duplicate. If, upon hearing, it appears to the satisfaction of the court that the petitioner is the owner of the instrument, that it has been lost, mutilated or destroyed and that no sufficient cause has been shown why it should not be paid or a duplicate thereof issued, the court shall make an order requiring the paying officer to pay it or requiring the governing body to direct the issuance of a duplicate upon such conditions as the court considers adequate for the protection of the issuer and the paying officer against loss or liability resulting from any demand or payment of the principal of or interest on the instrument.
[1959 c.410 §5]

BOND INTEREST

288.510 Bond interest rate; sale value. Notwithstanding any other law to the contrary except ORS 777.570, 777.575 and 778.145 to 778.175, all bonds issued by this state, a city or its agency, a county, a port, a political subdivision or any other public corporation, shall bear interest at not to exceed a net effective rate of eight percent and shall be sold at not less than 98 percent of par value.
[1969 c.63 §1; 1971 c.366 §1]

288.990 [Formerly 287.990; repealed by 1959 c.213 §3]

288.991 [1959 c.410 §7; repealed by 1971 c.743 §432]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1971.

Robert W. Lundy
Legislative Counsel

CHAPTERS 289 AND 290
[Reserved for expansion]