

This opinion is issued in response to a question presented by Gary Bruebaker, Deputy State Treasurer, concerning Article XI, section 11g, of the Oregon Constitution.

QUESTION PRESENTED

Would the levy of an ad valorem property tax to repay bonded debt incurred through the sale of general obligation bonds issued by the State of Oregon pursuant to Articles XI-A, XI-E, XI-F(1), XI-G, XI-H, XI-I(1), XI-I(2) or XI-J of the Oregon Constitution require voter approval under Article XI, section 11g, if the bonds are issued after the effective date of that section?

ANSWER GIVEN

The State of Oregon may levy a property tax for the repayment of its general obligation bonds issued pursuant to Articles XI-A, XI-E, XI-F(1), XI-G, XI-H, XI-I(1), XI-I(2) or XI-J of the Oregon Constitution without meeting the voter approval requirements of Article XI, section 11g. A property tax levied to repay the bonds would not be a "new" or "additional" tax that requires voter approval under section 11g(3). Moreover, even if such a tax were to be considered "new" or "additional," the tax would fall within the exception to the voter approval requirements provided in section 11g(3)(b) for taxes levied to repay bonded indebtedness approved by the voters in an election held prior to the effective date of section 11g.

DISCUSSION

Article XI, section 11g, of the Oregon Constitution was approved by the people at the November 5, 1996, general election as Ballot Measure 47.⁽¹⁾ This constitutional amendment became effective 30 days after that date, or December 5, 1996. *See* Or Const Art IV, § 1(4)(d).

Article XI, section 11g(1), generally limits ad valorem property taxes for the 1997-1998 tax year, exclusive of taxes to pay bonded indebtedness, to the lesser of (i) the amount imposed on the same property for the tax year ending June 30, 1996, reduced by ten percent, or (ii) the amount imposed on the same property for the tax year ending June 30, 1995. For tax years after 1997-1998, section 11g(2) generally limits the ad valorem property taxes on each property to the previous year's tax, plus three percent, but exempts from this limitation the portion of the property tax levied on each property for the payment of bonded indebtedness.

Section 11g(3) provides in relevant part:

(a) On and after the effective date of this section, there shall be no new or additional ad valorem property tax levies against real property, unless the question of the levy has been approved by not less than fifty percent (50%) of voters voting in a general election in an even numbered year, or other election in which not less than fifty percent (50%) of the registered voters eligible to vote on the question cast a ballot.

(b) Nothing in this subsection shall affect taxes levied for the repayment of bonded indebtedness approved by voters in an election held prior to the effective date of this Act, or the issuance of refunding bonds to pay such bonded indebtedness. This subsection shall not require voter approval for the issuance of, or the levy of taxes to pay, bonds issued to refund bonds issued in conformance with this subsection.

If the levy of a property tax to repay bonded debt incurred by the State of Oregon after December 5, 1996, constitutes a "new" or "additional" tax within the meaning of section 11g(3)(a), then such a levy could not occur without voter approval unless it came within the exception in section 11g(3)(b).

The question asks about the levy of ad valorem property taxes to repay bonded debt incurred through the sale of general obligation bonds issued by the State of Oregon pursuant to Articles XI-A, XI-E, XI-F(1), XI-G, XI-H, XI-I(1), XI-I(2) and XI-J of the Oregon Constitution. The bond programs included in these provisions are: Farm and Home Loans to Veterans; State Reforestation; Higher Education Building Projects; Higher Education Institutions and Activities, Community Colleges; Pollution Control; Water Development Projects; Multifamily Housing for the Elderly and Disabled; and Small Scale Energy Loans.⁽²⁾ For ease of reference, we will refer to the bonds that are issued under these programs as the "State Bonds."

I. New or Additional Taxes

The voter approval requirements in Article XI, section 11g(3), apply only if a tax is "new" or "additional" within the meaning of that section. Thus, we first consider whether ad valorem taxes levied to repay State Bonds would be either "new" or "additional" taxes.

A. New Tax

We previously opined that a "new" ad valorem property tax within the meaning of section 11g(3) is

a new kind of tax that is legally authorized after the effective date of section 11g, not merely another iteration of an existing tax, such as a new serial levy to replace a levy that is expiring, or a one-year or continuing levy within a growing tax base.

47 Op Atty Gen (No. 8246, February 24, 1997) (*hereinafter* Op Atty Gen No. 8246), slip op at 32. We concluded that "a tax approved by the voters before December 5, 1996, but levied on or after that date, would be an existing tax, not a 'new' tax." *Id.* Based on this interpretation of a "new" tax, the levy of a property tax to repay State Bonds would not be a new tax within the meaning of section 11g(3)(a) because the authority to levy such a tax predates section 11g. In fact, such authority has existed for many years.

The oldest State Bond program, the veterans' loan program, was approved by the people of Oregon on November 7, 1944. Or Const Art XI-A. The most recent program, for small scale energy loans, was approved on May 20, 1980. Or Const Art XI-J. For each State Bond program, the constitutional authority to levy an ad valorem property tax is part of the same constitutional provision that creates the program. Article XI-E, which establishes the State Reforestation program, is typical of the tax levy authorizations for State Bonds. That article provides in relevant part:

An ad valorem tax outside the limitation imposed by section 11, article XI, of this constitution shall be levied annually upon all the property in the state of Oregon taxed on an ad valorem basis, in sufficient amount to provide for the payment of such indebtedness and the interest thereon. The legislative assembly may provide other revenues to supplement or replace the said tax levies. The legislature shall enact legislation to carry out the provisions hereof.

Although the people expressly approved the levy of this ad valorem property tax when the constitutional provision was adopted, to our knowledge no tax has ever actually been levied pursuant to that constitutional authority. The same is true for each of the other State Bond programs.

Nevertheless, the legal authority to levy an ad valorem property tax to repay State Bonds has existed in the Oregon Constitution and by statute long before approval of Article XI, section 11g, of the Oregon Constitution. Or Const Art XI-A, XI-E, XI-F(1), XI-G, XI-H, XI-I(1), XI-I(2) and XI-J; *see* ORS 291.445, 311.657 to 311.662 (setting forth process for certifying tax levy). Therefore, we conclude that the levy of an ad valorem property tax pursuant to the constitutional provisions creating the State Bond programs would not constitute a "new" tax under section 11g(3)(a).

This conclusion is consistent with our treatment of an earlier property tax limitation measure that appeared on the ballot in the 1978 general election. That measure provided in relevant part

The maximum amount of any ad valorem tax on real property shall not exceed one and one-half percent (1-1/2%) of the full cash value of such property. * * *

* * * * *

From and after the effective date of this article, any change in State taxes enacted for the purpose of increasing revenues * * * must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature, except that *no new ad valorem taxes on real property* or sales or transaction taxes on the sales of real property *may be imposed*.

Ballot Measure 6 (1978) (emphasis added). Construing that language, we concluded that because the constitutional provisions authorizing the levy of an ad valorem property tax for State Bonds were essentially self-executing, such a levy would not constitute a "new" ad valorem tax. 39 Op Atty Gen 150, 254-55 (1978). We see no reason to depart from that analysis.

A court could disagree with our conclusion that taxes levied to repay State Bonds are not "new" taxes and construe the

term "new" tax in Article XI, section 11g(3)(a), to be any tax that was never before levied. Even if a court were to hold that taxes levied to repay State Bonds are "new" taxes, however, the voter approval requirement would not apply because those taxes would come within the exception in section 11g(3)(b), as discussed below.

B. Additional Tax

We also opined in Op Atty Gen No. 8246 that an "additional" tax within the meaning of section 11g(3) is one that is "in addition to those that may be imposed under the limitations of sections 11g(1) and (2)." *Id.* at 33. Based on this interpretation of an "additional" tax, a property tax levied to repay State Bonds would not be an "additional" tax.

Section 11g(1) limits the ad valorem property taxes on each property for tax year 1997-98, "excluding the portion of the tax that is levied to pay bonded indebtedness or interest thereon." Similarly, section 11g(2) limits the ad valorem property tax for tax years following 1997-98, but "[t]he portion of the property tax that is levied on each property for the payment of bonded indebtedness or interest thereon is exempted" from that limitation. Interpreting these provisions, we previously concluded that taxes to pay bonded indebtedness are not subject to the limitation in section 11g(1) for tax year 1997-98, and that bond taxes also are exempt from the three percent annual growth limitation in section 11g(2) for tax years after 1997-98. Op Atty Gen No. 8246 at 14-15, 22-23. Therefore, we concluded that because bond taxes are not subject to the limitations of sections 11g(1) and (2), bond taxes could never be "additional" to the taxes imposed under those limitations. *Id.* at 35. Accordingly, a tax levy to repay State Bonds would not be an "additional" tax within the meaning of section 11g(3)(a).

Again, a court could disagree with our conclusion and hold that a tax levied to repay State Bonds would be an "additional" tax because no such tax was paid by any taxpayer when section 11g was approved. We believe it is more likely, however, that a court would hold that a tax levied to repay State Bonds would not be an "additional" tax because taxes to repay bonded indebtedness are outside the tax limitations imposed under sections 11g(1) and (2). Even if a court were to hold that taxes levied to repay State Bonds are "additional" taxes, the voter approval requirement would not apply because those taxes would come within the exception in section 11g(3)(b), as discussed below.

II. Exception for Bonded Indebtedness Approved by the Voters

Whether or not a tax is "new" or "additional," the voter approval requirements of section 11g(3)(a) do not apply to taxes levied to pay bonded indebtedness previously approved by the voters. If taxes levied to pay State Bonds were considered "new" or "additional" taxes, such taxes would be excepted by section 11g(3)(b) from the voter approval requirements.

Section 11g(3)(b) provides:

Nothing in this subsection shall affect taxes levied for the repayment of ***bonded indebtedness approved by voters in an election held prior to the effective date of this Act***, or the issuance of refunding bonds to pay such bonded indebtedness. This subsection shall not require voter approval for the issuance of, or the levy of taxes to pay, bonds issued to refund bonds issued in conformance with this subsection.

We previously opined that the effect of section 11g(3)(b) is to exempt from the voter approval requirements "all taxes levied to pay bonded indebtedness if the bonds were voter approved before December 5, 1996." Op Atty Gen 8246 at 40. We now conclude that taxes levied to pay State Bonds are exempt from the voter approval requirement because State Bonds are "bonded indebtedness" within the meaning of section 11g(3)(b) and were "approved by voters" in an election held prior to December 5, 1996.

A. "Bonded Indebtedness"

To come within the section 11g(3)(b) exception to the voter approval requirement in section 11g(3)(a), State Bonds must be "bonded indebtedness." We conclude that State Bonds are "bonded indebtedness" within the meaning of section 11g(3)(b).

The state's power to incur indebtedness through issuance of State Bonds is established in Articles XI-A, XI-E, XI-F(1), XI-G, XI-H, XI-I(1), XI-I(2) and XI-J of the Oregon Constitution. Each of these articles sets forth the maximum amount of indebtedness that may be incurred for the State Bond program in terms of a percentage of the total value of all property in the state. Because these articles describe the permitted indebtedness as a percentage of the state's property value, rather than a set amount, these bond programs operate without the need for further voter approval.

Article XI-A, which establishes the program for Farm and Home Loans for Veterans, is typical of the State Bond

programs. Article XI-A provides:

Section 1. Notwithstanding the limits contained in section 7, article XI of the Constitution, the credit of the State of Oregon may be loaned and indebtedness incurred in an amount not to exceed eight percent of the true cash value of all the property in the state, for the purpose of creating a fund * * * to be advanced for the acquisition of farms and homes for the benefit of male and female residents of the State of Oregon who served in the Armed Forces of the United States. * * *

Section 2. Bonds of the state of Oregon containing a direct promise on behalf of the state to pay the face value thereof, with the interest therein provided for, may be issued to an amount authorized by section 1 * *

* * * * *

Section 4. There shall be levied each year, at the same time and in the same manner that other taxes are levied, a tax upon all property in the state of Oregon not exempt from taxation, * * * to provide for the payment of principal and interest of the bonds authorized to be issued by this article. * * *

The term "bonded indebtedness" is not defined in section 11g or any other related sections of Article XI. We previously opined that, for purposes of the exclusion from the limitations of section 11g(1) and (2), the term "bonded indebtedness" encompasses only debt arising from instruments commonly recognized as "bonds," but includes all kinds of bonds. We stated

A "bond" is defined as an "interest-bearing document giving evidence of long-term debt and issued by a government or corporation sometimes secured by a lien on property and often designed to take care of a particular financial need." * * *

* * * because the Measure does not appear to limit the kinds of "bonded indebtedness" to which it refers, we believe it would be interpreted as including all kinds of bonds, including but not necessarily limited to general obligation and revenue bonds.

48 Op Atty Gen (No. 8243, October 17, 1996) at 13. We reaffirmed that conclusion in Op Atty Gen No. 8246 at 10-11.

We have not previously addressed, however, the form of "bonded indebtedness" that the voters must have approved in an election held before December 5, 1996, for purposes of the section 11g(3)(b) exception from the voter approval requirement in section 11g(3)(a). An argument might be made that for purposes of section 11g(3)(b) the voters must have approved a particular bond issuance with a stated amount and purpose, for example, the issuance of bonds in the amount of \$10 million to build a high school.

When interpreting a constitutional provision we are to give preeminent attention to its text and context. *PGE v. Bureau of Labor and Indus.*, 317 Or 606, 610-612 n 4, 859 P2d 1143 (1993). We are to give the words used their plain, ordinary meaning unless they have a well-established technical or legal meaning. *Pace Consultants v. Roberts*, 297 Or 590, 594, 687 P2d 779 (1984); *Jones v. Hoss*, 132 Or 175, 285 P 205 (1930).

Section 11g(3)(b) does not refer to "specific bonds," "bonds" or a "bond issuance" approved by voters, but to "bonded indebtedness." In other words, section 11g(3)(b) requires only that the voters had approved "indebtedness" incurred by the governmental entity through the issuance of "bonds."

The term "indebtedness" has several meanings. Webster's Third New International Dictionary (unabridged 1993) defines the term "indebtedness" as

1 a : the condition of being indebted * * * **b :** the extent to which one is indebted * * * **2 :** something (as a sum of money) that is owed * * * .

Id. at 1147. Discussing the terms "indebtedness" and "liabilities" when used in a contractual provision, the Oregon Supreme Court noted that those terms are

accordion words: they are capable of expanding and contracting in their connotations. They may mean present, current, future, fixed or contingent debts. Their meaning in each instance must be determined, not by looking in the dictionaries, but by reading the context, reviewing the transaction, and taking note of the subsequent conduct of the parties who used the equivocal words.

Erickson v. Grande Ronde Lumber Co., 162 Or 556, 569, 92 P2d 170 (1939), *rehearing den'd* 94 P2d 139 (1939). Thus, there is nothing in the term "indebtedness" to indicate that the exception for "bonded indebtedness" should be construed as referring to a particular stated amount or specific bond issuance.

Within the context of section 11g, the exceptions for bonded indebtedness appear to be intended to preserve contractual obligations for bonds issued with a promise to levy a tax to repay the bonds. Op Atty Gen No. 8246 at 13, 14; *see also* 45 Op Atty Gen 59, 82 (1986) (noting as to similar previous tax limitation measure that bondholders' contract right to the security of ad valorem property tax levy could not be impaired by the measure). As to the state's interest in preserving pre-existing contractual obligations, we see no basis to distinguish State Bonds from any other bonded indebtedness merely because the debt was not expressed in a dollar amount but as a percentage of the value of all property in the state.

Thus, we conclude that "bonded indebtedness" under section 11g(3)(b) includes the bonded debt incurred through the sale of general obligation bonds issued by the State of Oregon pursuant to Articles XI-A, XI-E, XI-F(1), XI-G, XI-H, XI-I(1), XI-I(2) and XI-J of the Oregon Constitution.

B. "Approved by Voters"

Lastly, to come within the section 11g(3)(b) exception to the voter approval requirement in section 11g(3)(a), the State Bonds must have been "approved by voters in an election held prior to the effective date of this Act." The people of the State of Oregon (i.e., the voters) approved each State Bond program as an amendment to the Oregon Constitution in a general election held before December 5, 1996. There is no other action by the voters needed to issue bonds in furtherance of the constitutional directives. The people have approved the bonded debt and that approval cannot be changed without a subsequent vote. The legislature has enacted laws to implement the constitutional authority to issue State Bonds.⁽³⁾ *See* ORS chapter 288; ORS 291.455. There is no need for another election to issue State Bonds.

The phrase "approved by voters" in section 11g(3)(b) can only mean that final voter approval has been given to issue the bonds. Such is the case with the State Bonds; they were "approved by voters" in an election approving the constitutional amendments.

This interpretation is consistent with our analysis of earlier property tax initiatives. As discussed above, Ballot Measure 6 (1978) limited the maximum amount of ad valorem property tax to one and one-half percent of the full cash value of the applicable property. The measure also excepted from that tax limitation "ad valorem taxes or special assessments to pay the interest and redemption charges on any indebtedness approved by the voters prior to the time this section becomes effective." We opined that the exception in Measure 6 applied to all indebtedness approved by the voters prior to that effective date, including unissued and outstanding bonds. 39 Op Atty Gen 150, 196-97 (1978). Addressing State Bonds specifically, we concluded that the state could levy a tax outside the limits of Measure 6 for State Bonds because they were previously "voter-authorized." *Id.* at 254-255.

Ballot Measure 2 (1984) exempted from its property tax limitation "ad valorem property taxes or special assessments levied to pay the interest and redemption charges on any bonded indebtedness *authorized* prior to or concurrent with the date upon which this amendment becomes effective." (Emphasis added.) We concluded that "authorized" meant "voter or legislatively approved bonding programs not requiring further voter approval or legislation" and that, except for the Higher Education Facility Bonds in Article XI-G, the State Bonds were constitutionally authorized.⁽⁴⁾ 44 Op Atty Gen 85, 131 (1984). Because the amount of bonds that may be issued in a biennium pursuant to Article XI-G is contingent upon a dollar amount appropriated from the General Fund by the legislature for the same or similar purposes, we concluded that the "authorization" is not complete until the legislature acts. *Id.* Unlike Ballot Measure 2, section 11g(3)(b) does not refer to bonds that are "authorized" before the effective date of the measure, but to bonds that are "approved by voters" before the effective date. The voters approved issuance of Higher Education Facility Bonds up to three-fourths of one percent of the value of the taxable property in the state when they approved Article XI-G on May 15, 1964. No further voter approval is needed.

Thus, we conclude that State Bonds, including those issued under Article XI-G, have been "approved by voters" in an election held prior to December 5, 1996, within the meaning of section 11g(3)(b). Voter approval is therefore not required to levy an ad valorem property tax to repay bonded indebtedness incurred by sale of State Bonds issued pursuant to Articles XI-A, XI-E, XI-F(1), XI-G, XI-H, XI-I(1), XI-I(2) or XI-J of the Oregon Constitution.

III. Effect of Section 11g on Constitutional Authority to Levy Taxes to Repay State Bonds

Section 11g states that it shall be given effect "[n]otwithstanding Section 32, Article 1, Section 1, Article IX, Section 11,

Article 11, or any other provision of this Constitution." The State Bond programs are not part of Article XI, section 11, or any other provision, expressly mentioned in the notwithstanding clause. Nevertheless, the argument could be made that because section 11g is intended to take effect "notwithstanding * * * any other provision of this Constitution," the express authorizations to levy a property tax to pay State Bonds are repealed.

Nothing in section 11g suggests it was intended to repeal the constitutional authority for the levy of property taxes to repay State Bond. Instead, the numerous exceptions for taxes levied to pay bonded indebtedness indicate a specific intent to exclude existing bond programs and the taxes to pay them from the section 11g limitations. *See* sections 11g(1), (2)(b), (3)(b). Furthermore, Oregon courts do not favor repeal by implication when interpreting statutory or constitutional enactments. *Balzer Mach. v. Kline Sand & Gravel*, 271 Or 596, 601, 533 P2d 321 (1975); *State v. Scott*, 237 Or 390, 397, 390 P2d 328 (1964). Only if two provisions are totally irreconcilable will a later provision prevail over the earlier. *Harris v. Craig*, 299 Or 12, 15 n 1, 697 P2d 189 (1985). If the provisions can function together, there must be some persuasive indication that the newer provision was intended to supersede the earlier before the court will consider the later provision to repeal the earlier. *Id.*

We previously concluded that the scope of the "notwithstanding" clause of section 11g should be limited to "situations of unavoidable conflict with some other section." Op Atty Gen No. 8246 at 27. Here, the State Bond programs and the levy of a tax to pay them are expressly mandated in the Oregon Constitution. As discussed above, we have interpreted sections 11g(1) and (2) to exempt from their limitations taxes levied to pay bonded indebtedness. Under such an interpretation, there is no conflict between Article XI, section 11g, and the provisions of the Oregon Constitution authorizing a property tax to repay State Bonds. Therefore, we conclude that the authority in Articles XI-A, XI-E, XI-F(1), XI-G, XI-H, XI-I(1), XI-I(2) and XI-J for the levy of ad valorem property taxes to repay State Bonds issued pursuant to those articles is not repealed by section 11g.

This opinion is provided at the request of Deputy Treasurer Gary Bruebaker and may be relied upon only by the State of Oregon, its officers and employees.

HARDY MYERS
Attorney General

1. Instead of repeating in this opinion a discussion of the principles used by a court in interpreting constitutional amendments approved by the people as ballot measures, we refer you to 47 Op Atty Gen (No. 8243, October 17, 1996), at 6-7.

Return to [previous location](#).

2. The relevant provisions of the Oregon Constitution with respect to the State Bond programs provide:

ARTICLE XI - A. FARM AND HOME LOANS TO VETERANS

Section 1. Notwithstanding the limits contained in section 7, article XI of the Constitution, the credit of the State of Oregon may be loaned and indebtedness incurred in an amount not to exceed eight percent of the true cash value of all the property in the state, for the purpose of creating a fund, to be known as the "Oregon War Veterans' Fund," to be advanced for the acquisition of farms and homes for the benefit of male and female residents of the State of Oregon who served in the Armed Forces of the United States. Secured repayment thereof shall be and is a prerequisite to the advancement of money from such fund, except that moneys in the Oregon War Veterans' Fund may also be appropriated to the Director of Veterans' Affairs to be expended, without security, for the following purposes:

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Section 2. Bonds of the state of Oregon containing a direct promise on

behalf of the state to pay the face value thereof, with the interest therein provided for, may be issued to an amount authorized by section 1 hereof for the purpose of creating said "Oregon War Veterans' Fund." Said bonds shall be a direct obligation of the state and shall be in such form and shall run for such periods of time and bear such rates of interest as provided by statute.

* * * * *

Section 4. There shall be levied each year, at the same time and in the same manner that other taxes are levied, a tax upon all property in the state of Oregon not exempt from taxation, not to exceed two (2) mills on each dollar valuation, to provide for the payment of principal and interest of the bonds authorized to be issued by this article. The two (2) mills additional tax herein provided for hereby is specifically authorized and shall not be computed as a part of the revenue raised by taxation which is subject to the tax limitation of section 11, article XI of the constitution of the state of Oregon, and said tax levy hereby authorized shall be in addition to all other taxes which may be levied according to law.

* * * * *

ARTICLE XI - E. STATE REFORESTATION

Section 1. The credit of the state may be loaned and indebtedness incurred in an amount which shall not exceed at any one time $\frac{3}{16}$ of 1 percent of the true cash value of all the property in the state taxed on an ad valorem basis, to provide funds for forest rehabilitation and reforestation and for the acquisition, management, and development of lands for such purposes. So long as any such indebtedness shall remain outstanding, the funds derived from the sale, exchange, or use of said lands, and from the disposal of products therefrom, shall be applied only in the liquidation of such indebtedness. Bonds or other obligations issued pursuant hereto may be renewed or refunded. An ad valorem tax outside the limitation imposed by section 11, article XI, of this constitution shall be levied annually upon all the property in the state of Oregon taxed on an ad valorem basis, in sufficient amount to provide for the payment of such indebtedness and the interest thereon. The legislative assembly may provide other revenues to supplement or replace the said tax levies. The legislature shall enact legislation to carry out the provisions hereof. This amendment shall supersede all constitutional provisions in conflict herewith.

ARTICLE XI - F(1). HIGHER EDUCATION BUILDING PROJECTS

Section 1. The credit of the state may be loaned and indebtedness incurred in an amount which shall not exceed at any one time three-fourths of one percent of the true cash value of all the taxable property in the state, as determined by law to provide funds with which to redeem and refund outstanding revenue bonds issued to finance the cost of buildings and other projects for higher education, and to construct, improve, repair, equip, and furnish buildings and other structures for such purpose, and to purchase or improve sites therefor.

* * * * *

Section 3. Ad valorem taxes shall be levied annually upon all the taxable property in the state of Oregon in sufficient amount, with the

aforesaid revenues, gifts, grants, or building fees, to provide for the payment of such indebtedness and the interest thereon. The legislative assembly may provide other revenues to supplement or replace such tax levies.

Section 4. Bonds issued pursuant to this article shall be the direct general obligations of the state, and be in such form, run for such periods of time, and bear such rates of interest, as shall be provided by statute. Such bonds may be refunded with bonds of like obligation. Unless provided by statute, no bonds shall be issued pursuant to this article for the construction of buildings or other structures for higher education until after all of the aforesaid outstanding revenue bonds shall have been redeemed or refunded.

* * * * *

ARTICLE XI-G. HIGHER EDUCATION INSTITUTIONS AND ACTIVITIES; COMMUNITY COLLEGES

Section 1. (1) Notwithstanding the limitations contained in section 7, Article XI of this Constitution, and in addition to other exceptions from the limitations of such section, the credit of the state may be loaned and indebtedness incurred in an amount not to exceed at any time three-fourths of one percent of the true cash value of all taxable property in the state, as determined by law.

(2) Proceeds from any loan authorized or indebtedness incurred under this section shall be used to provide funds with which to construct, improve, repair, equip and furnish those buildings, structures and projects, or parts thereof, and to purchase or improve sites therefor, designated by the Legislative Assembly for higher education institutions and activities or for community colleges authorized by law to receive state aid.

(3) The amount of any loan authorized or indebtedness incurred under this section by means of bonds to be issued in any biennium shall not exceed the dollar amount appropriated from the General Fund for the same or similar purposes. Any dollar amounts appropriated to meet the requirements of this subsection shall be specifically designated therefor by the Legislative Assembly.

(4) Nothing in this section prevents the financing of buildings, structures and projects, or parts thereof, by a combination of the moneys available under this section, under Article XI-F(1) of this Constitution, and from other lawful sources. However, moneys available under this section shall not be expended on or for any buildings, structures or projects, or parts thereof, that are wholly self-liquidating and self-supporting.

Section 2. Bonds issued pursuant to this Article shall be the direct general obligations of the state and shall be in such form, run for such periods of time, and bear such rates of interest as the Legislative Assembly provides. Such bonds may be refunded with bonds of like obligation.

Section 3. Ad valorem taxes shall be levied annually upon the taxable property within the State of Oregon in sufficient amount to provide for the prompt payment of bonds issued pursuant to this Article and the interest thereon. The Legislative Assembly may provide other revenues to

supplement or replace, in whole or in part, such tax levies.

ARTICLE XI-H. POLLUTION CONTROL

Section 1. In the manner provided by law and notwithstanding the limitations contained in sections 7 and 8, Article XI, of this Constitution, the credit of the State of Oregon may be loaned and indebtedness incurred in an amount not to exceed, at any one time, one percent of the true cash value of all taxable property in the state:

(1) To provide funds to be advanced, by contract, grant, loan or otherwise, to any municipal corporation, city, county or agency of the State of Oregon, or combinations thereof, for the purpose of planning, acquisition, construction, alteration or improvement of facilities for or activities related to, the collection, treatment, dilution and disposal of all forms of waste in or upon the air, water and lands of this state; and

(2) To provide funds for the acquisition, by purchase, loan or otherwise, of bonds, notes or other obligations of any municipal corporation, city, county or agency of the State of Oregon, or combinations thereof, issued or made for the purposes of subsection (1) of this section.

* * * * *

Section 4. Ad valorem taxes shall be levied annually upon all taxable property within the State of Oregon in sufficient amount to provide, together with the revenues, gifts, grants from the Federal Government, user charges, assessments and other fees referred to in section 2 of this Article for the payment of indebtedness incurred by the state and the interest thereon. The Legislative Assembly may provide other revenues to supplement or replace such tax levies.

Section 5. Bonds issued pursuant to section 1 of this Article shall be the direct obligations of the state and shall be in such form, run for such periods of time, and bear such rates of interest, as shall be provided by law. Such bonds may be refunded with bonds of like obligation.

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ARTICLE XI-I(1). WATER DEVELOPMENT PROJECTS

Section 1. Notwithstanding the limits contained in sections 7 and 8, Article XI of this Constitution, the credit of the State of Oregon may be loaned and indebtedness incurred in an amount not to exceed one and one-half percent of the true cash value of all the property in the state for the purpose of creating a fund to be known as the Water Development Fund. The fund shall be used to provide financing for loans for residents of this state for construction of water development projects for irrigation, drainage, fish protection, watershed restoration and municipal uses and for the acquisition of easements and rights of way for water development projects authorized by law. Secured repayment thereof shall be and is a prerequisite to the advancement of money from such fund. As used in this section, "resident" includes both natural persons and any corporation or cooperative, either for profit or nonprofit, whose principal income is from farming in Oregon or municipal or quasi-municipal or other body subject to the laws of the State of

Oregon. Not less than 50 percent of the potential amount available from the fund will be reserved for irrigation and drainage projects. For municipal use, only municipalities and communities with populations less than 30,000 are eligible for loans from the fund.

Section 2. Bonds of the State of Oregon containing a direct promise on behalf of the state to pay the face value thereof, with the interest therein provided for, may be issued to an amount authorized by section 1 of this Article for the purpose of creating such fund. The bonds shall be a direct obligation of the state and shall be in such form and shall run for such periods of time and bear such rates of interest as provided by statute.

Section 3. Refunding bonds may be issued and sold to refund any bonds issued under authority of sections 1 and 2 of this Article. There may be issued and outstanding at any time bonds aggregating the amount authorized by section 1 of this Article but at no time shall the total of all bonds outstanding, including refunding bonds, exceed the amount so authorized.

Section 4. Ad valorem taxes shall be levied annually upon all the taxable property in the State of Oregon in sufficient amount to provide for the payment of principal and interest of the bonds issued pursuant to this Article. The Legislative Assembly may provide other revenues to supplement or replace, in whole or in part, such tax levies.

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ARTICLE XI-I (2). MULTIFAMILY HOUSING FOR ELDERLY AND DISABLED

Section 1. In the manner provided by law and notwithstanding the limitations contained in section 7, Article XI of this Constitution, the credit of the State of Oregon may be loaned and indebtedness incurred in an amount not to exceed, at any one time, one-half of one percent of the true cash value of all taxable property in the state to provide funds to be advanced, by contract, grant, loan or otherwise, for the purpose of providing additional financing for multifamily housing for the elderly and for disabled persons. Multifamily housing means a structure or facility designed to contain more than one living unit. Additional financing may be provided to the elderly to purchase ownership interest in the structure or facility.

Section 2. The bonds shall be payable from contract or loan proceeds; bond reserves; other funds available for these purposes; and, if necessary, state ad valorem taxes.

Section 3. Bonds issued pursuant to section 1 of this Article shall be the direct obligations of the state and shall be in such form, run for such periods of time and bear such rates of interest as shall be provided by law. The bonds may be refunded with bonds of like obligation.

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ARTICLE XI-J. SMALL SCALE LOCAL ENERGY LOANS

Section 1. Notwithstanding the limits contained in sections 7 and 8, Article XI of this Constitution, the credit of the State of Oregon may be loaned and indebtedness incurred in an amount not to exceed one-half

of one percent of the true cash value of all the property in the state for the purpose of creating a fund to be known as the Small Scale Local Energy Project Loan Fund. The fund shall be used to provide financing for the development of small scale local energy projects. Secured repayment thereof shall be and is a prerequisite to the advancement of money from such fund.

Section 2. Bonds of the State of Oregon containing a direct promise on behalf of the state to pay the face value thereof, with the interest therein provided for, may be issued to an amount authorized by section 1 of this Article for the purpose of creating such fund. The bonds shall be a direct obligation of the state and shall be in such form and shall run for such periods of time and bear such rates of interest as provided by statute.

Section 3. Refunding bonds may be issued and sold to refund any bonds issued under authority of sections 1 and 2 of this Article. There may be issued and outstanding at any time bonds aggregating the amount authorized by section 1 of this Article but at no time shall the total of all bonds outstanding including refunding bonds, exceed the amount so authorized.

Section 4. Ad valorem taxes shall be levied annually upon all the taxable property in the State of Oregon in sufficient amount to provide for the payment of principal and interest of the bonds issued pursuant to this Article. The Legislative Assembly may provide other revenues to supplement or replace, in whole or in part, such tax levies.

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Return to [previous location](#).

3. The legislature has also provided for the certification of a tax levy and assessment if necessary to repay State Bonds. ORS 311.657 to 311.662.

Return to [previous location](#).

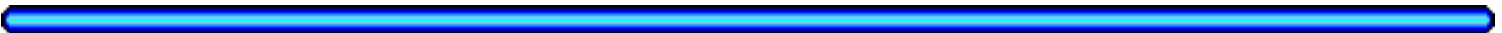
4. In 44 Op Atty Gen 85 (1984), we noted that for each of the State Bonds the statutes set forth procedures involving both the Governor and the Legislative Assembly in the issuance of the bonds. We concluded that those statutory provisions were part of the issuance process after the bonded indebtedness was authorized, not part of the authorization itself. *Id.* at 132.

Return to [previous location](#).

Go to:

[Top of page.](#)

[AG Opinions home page.](#)





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