

## **Willamette Falls Locks – Public Corporation Legislative Concept**

### **DRAFT**

#### **SECTION 1. Short title.**

Sections 1 through 23 of this 2019 Act shall be known, and may be cited, as the Willamette Falls Locks Authority Act.

#### **SECTION 2. Definitions.**

As used in sections 1 to 23 of this 2019 Act, <<public corporation>> means an entity that is created by the state of Oregon to carry out public missions and services by participating in activities or providing services that are also participated in or provided by private enterprise, and which has operational flexibility while retaining principles of public accountability and fundamental public policy.

#### **SECTION 3. Establishment.**

The Willamette Falls Locks Authority is established as an independent public corporation and may exercise and carry out all powers, rights and privileges that are expressly conferred upon it, are implied by law or are incident to such powers. In carrying out its powers, rights and privileges, the authority is a governmental entity performing governmental functions and exercising governmental powers, with the flexibility of a private corporation to carry out its mission. The authority is an independent public corporation with statewide purposes and missions and without territorial boundaries. The authority is a governmental entity but is not a unit of local or municipal government or a state agency for purposes of state law.

#### **SECTION 4. Public Purpose and Mission.**

(1) The public mission of the Willamette Falls Locks Authority is to establish ownership, oversight and management of the Willamette Falls Locks, for the purpose of creating a fully navigable Willamette River to enhance the economic vitality of Oregon. The authority carries out this purpose and mission by repairing, upgrading and operating the Willamette Falls navigation canal and locks for commercial, recreational, cultural, historic, heritage and tourism purposes. The authority may make full use of the power given to it under this Act to:

- (a) Acquire any and all interests in property, real or personal, including but not limited to property constituting the navigation canal and locks and associated lands, buildings, easements and museum facilities;
- (b) Repair, upgrade, maintain and operate the navigation canal and locks, including by contracting with public or private entities for repairs, upgrades, maintenance, or operation;
- (c) Enter into agreements with the United States Army Corps of Engineers for the transfer of ownership of the navigation canal and locks from the Corps to the authority, repair or maintenance of the navigation canal and locks, and training of personnel in the operation of the locks. Any such agreement may include transfer of monies to or from the United States Army Corps of Engineers;
- (d) Lease or transfer any portion of the navigation canal and locks to any public or private entity for purposes of maintenance, repair or operation;

- (e) Perform any work, or contract for the performance of work, that is necessary for or incident to a transfer of ownership of the navigation canal and locks and related buildings or easements from the United States Army Corps of Engineers;
  - (f) Perform any work, or contract for the performance of any work, related to seismic stabilization, rehabilitation or upgrade of the navigation canal and locks
  - (g) Collect user and license fees and charges
  - (h) Conduct any other activities, agreements, or contracts necessary to carry out its mission
  - (i) Subject to any limitations established under this chapter, the Board may take all other actions the Board deems necessary or expedient to ensure the financial viability of the Willamette Falls Locks or to promote the Locks to tourism and other industries related to the Locks' business operations, properties or facilities. This authority includes, but is not limited to, the power to undertake improvements and maintenance activities, on and off premises owned, operated or under the jurisdiction of the authority, that the Board determines to be necessary or expedient to ensure the continued operation and utility of the Willamette Falls navigation canal and locks and their approaches and associated waterways as a navigation facility.
- (2) The authority shall carry out its public purposes and missions in the manner that, in the determination of the authority, best promotes and implements its mission.

#### **SECTION 5. Liberal construction, severability**

The Willamette Falls Locks Authority Act shall be liberally construed to effect the purposes and intent of the act. If any provision of this act, or the application of that provision to any particular circumstance or person, is held invalid, the remainder of this act, and the application of that provision to circumstances or persons other than those to which it is held invalid, are not affected thereby.

#### **SECTION 6. Board of Directors**

(1) There is established a board of directors of the Willamette Falls Locks Authority consisting of no fewer than seven and not more than eleven individuals who have experience in areas related to the Authority's public mission and purpose or that are important to the success of the Willamette Falls Locks, including but not limited to Oregon federally recognized Indian Tribes, regional or municipal governments, marine industry, tourism industry, finance, marketing, and economic development. This list of areas of expertise or affiliation is not intended to be exhaustive, and the Governor may opt to appoint more than one individual from any of these categories; conversely the Governor may opt to appoint no one from any particular category.

The President of the Senate, Senate Minority Leader, Speaker of the House of Representatives, and House Minority Leader shall each appoint one member from their respective bodies to act as a nonvoting observer of and advisor to the Board. The member of the Legislative Assembly may not exercise any power, right or privilege of a Board member.

(2) The directors shall be appointed by the Governor. The term of office of each director is 4 years. Before the expiration of the term of a director, the Governor shall appoint a successor whose term begins upon the expiration of the term of the predecessor. A director is eligible for reappointment. If there is a vacancy or imminent vacancy for any cause, the Governor shall make an appointment, to become effective immediately, for the unexpired term. In the event that a director's 4-year term has expired, but

the Governor has not yet appointed a successor, the existing director may remain on the Board until such time as a successor has been duly appointed.

(3) Directors must be citizens of the United States. No director may be an employee of the authority.

(4) The board shall select one of its members as chairperson and another as vice chairperson for such terms and with such duties and powers as the board considers necessary for performance of the functions of those offices. The board shall adopt bylaws concerning its operations and procedures, including frequency of meetings, how a quorum is to be constituted and when a quorum is necessary.

(5) Members may be removed at any time during the term for any cause at the pleasure of the Governor.

(6) The Governor shall organize and coordinate the process of appointing initial directors. Initial appointments must be made within 120 days of the effective date of this 2020 Act.

(7) After the initial board of directors is appointed, the Governor shall select six directors to serve an initial two-year term, notwithstanding the term of office specified in subsection (2) of this section.

(8) After the initial appointment process is completed, subsequent appointments of directors shall be made by the Governor, in consultation with the staff of the authority, in cooperation with the staff of the Governor, according to procedures established by the board.

#### **SECTION 7. Powers and duties of board**

Except as otherwise provided in the Willamette Falls Locks Authority Act, the board of directors of the Willamette Falls Locks Authority, and officials acting under the authority of the board, shall exercise all the powers of the authority and shall govern the authority. The authority may, within or outside the state:

(1) Establish policies for the organization, administration and development of the authority.

(2) Appoint, employ or contract for administrative, professional, trade, legal, occupational and other personnel as necessary or appropriate to carry out the public mission and purpose of the authority, and prescribe their compensation and terms of office or employment

(3) Appoint an Advisory Committee to broaden the opportunity for interested parties to advise the Commission on the operation, funding, marketing and other aspects of the Locks.

(4) Make contracts and agreements, enter into any partnership, joint venture or other business arrangement, create and participate fully in the operation of any business structure with any government, nonprofit or for-profit person or entity, whether public or private, that in the judgment of the authority is necessary or appropriate to carry out the authority's public mission and purpose.

(5) Acquire, purchase, receive, hold, control, convey, sell, manage, operate, lease, license, lend, invest, improve, develop, use, dispose of and hold title to real and personal property of any nature, including intellectual property, in its own name. Specifically, the authority shall negotiate the terms, accept and hold title to the Willamette Falls Locks and adjacent property and easements currently held by the United States Army Corps of Engineers.

(6) Sue in its own name and be sued, plead and be impleaded in all actions, suits or proceedings in any forum brought by it or against it by any and all private or state, local, federal or other public entities, agencies or persons.

(7) Encourage and accept grants, gifts and donations for the benefit of the authority, and subject to the terms of the gift, retain, invest and use such gifts as deemed appropriate by the authority. Gifts or donations may not be used to benefit directors or employees of the authority. The intent of the Legislative Assembly is to allow the authority to receive gifts or donations in the same fashion and nature as gifts or donations to an organization that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code, and affords the donating individual or organization the same tax exemption benefits. As part of its prerogative to seek and accept donated funds, the Authority may opt to establish an endowment fund and also establish a separate foundation.

(8) Acquire, receive, hold, keep, pledge, control, convey, manage, use, lend, expend and invest funds, appropriations, grants, gifts, bequests, stock and revenue from any source.

(9) Borrow money for the needs of the authority, in such amounts and for such time and upon such terms as may be determined by the authority or the board; and, issue and sell revenue bonds in accordance with ORS 287A.

(10) Erect, construct, improve, upgrade, develop, repair, maintain, equip, furnish, lease, lend, convey, sell, manage, operate, use, dispose of and hold title to buildings, facilities, structures and lands, and obtain any permits, approvals, or permissions needed in connection with these activities.

(11) Purchase insurance, operate a self-insurance program, participate in the State insurance pool, or otherwise arrange for the equivalent of insurance coverage of any nature and the indemnity and defense of its officers, agents and employees or other persons designated by the authority to carry out or further the missions of the authority. The authority may indemnify its board members from any liability associated with their service on the board; it may carry board indemnification insurance.

(12) Establish, charge, collect and use charges and fees for authority services and the use of authority facilities, including a percentage of revenues from fees charged to passengers on commercial recreational craft (cruise boats, etc.). The authority may work with the Marine Board to establish fees to be collected for the authority. The authority may also work with Travel Oregon, Travel Portland, Mt. Hood Territory or other organizations to obtain grants funded through Transient Lodging Tax funds or other revenue sources. The authority may also receive funds from federal, state, regional, local and other governments.

(13) Impose fines or fees as convenient or necessary to deter illegal activity that may hinder the mission or goals of the authority.

(14) Enforce and recover for payment to the authority any charges, fines or fees.

(15) Adopt, amend or repeal bylaws, policies and standards as convenient or necessary to carry out the public mission and purpose of the authority.

(16) Contract with any state agency for the performance of such duties, functions and powers as is appropriate. A state agency may not charge the authority for such services an amount that is greater than the actual cost of the services.

(17) Make available, by lease or otherwise, or control access to, any authority facilities or services or other of its properties or assets on such terms as considered appropriate by the authority, charge and collect rent or other fees or charges for such availability or access, and terminate or deny any such availability or access for any reason.

(18) Contract for the operation of any department, section, equipment or holdings of the authority and enter into any agreements with any person for the management of any authority properties or for the more

efficient or economical performance of legal, clerical, accounting, administrative or other functions relating to the authority.

(19) Interact, consult, and cooperate with any government agency.

(20) Perform any other acts that in the judgment of the authority are necessary or appropriate in accomplishing the public mission and purpose described in or carrying out the powers granted by the Willamette Falls Locks Authority Act.

(21) Provide for public safety and security in all aspects of the operation of the Locks and associated activities, including by contracting with public or private entities for safety and security.

(22) Collaborate with such entities as the Willamette Falls Trust, Willamette Falls & Landings Heritage Area Coalition, Willamette Falls Heritage Foundation, and other organizations, to the entities' mutual benefit.

(23) Establish and exercise broad operational authority, including authority to regulate operating practices to optimize the river experience for all users, to regulate practices related to environmentally hazardous materials, to establish days and times of service for different classes of users, to establish fares for different classes of users and to establish a certification program to enable self-operation by commercial users.

(24) Establish a Locks operations training program. All operators of the Locks system, including but not limited to employees and volunteers of the public corporation, contractors, or commercial navigation operations, must satisfactorily pass the requirements of the program in order to operate the Locks.

#### **SECTION 8. Chief Operating Officer.**

The board of directors of the Willamette Falls Locks Authority may appoint a Chief Operating Officer of the authority. The Chief Operating Officer is the executive and governing officer of the authority responsible for day-to-day operations. Subject to the supervision of the board, the Chief Operating Officer is authorized to direct the affairs of the authority. In the event that a COO not appointed, the Board may designate some other person as having overall responsibility for the operation of the Locks, under the Board's authority.

#### **SECTION 9. Report to Legislative Assembly**

The president of the Willamette Falls Locks Authority shall file with the Legislative Assembly and the Governor, not later than April 15 of each even numbered year, a report describing the authority's activities and operations during the preceding calendar year.

#### **SECTION 10. Applicable law.**

(1) The provisions of ORS chapters 190, 192, 244 and 295 and ORS 30.260 to 30.460, 236.605 to 236.640, 243.650 to 243.782, 297.040, 307.090 and 307.112 apply to the Willamette Falls Locks Authority to the same extent and on the same terms that they apply to public bodies other than the state.

(2) The authority may acquire, by condemnation or otherwise, private property that is necessary or convenient in carrying out any power granted to the authority. Except as provided in subsection (3) of this section, the provisions of ORS chapter 35 apply to the authority to the same extent and on the same terms that they apply to public bodies other than the state.

(3) Except as otherwise provided by law, the provisions of ORS chapters 182, 183, 240, 270, 273, 276, 279A, 279B, 279C, 282, 283, 291, 292, 293, 294 and 297 and ORS 35.550 to 35.575, 180.060, 180.210 to 180.235, 183.710 to 183.730, 183.745, 183.750, 190.430, 190.480, 190.490, 192.105, 200.035, 243.105 to 243.585, 243.696, 278.011 to 278.120, 279.835 to 279.855, 283.085 to 283.092, 357.805 to 357.895 and 656.017 (2) do not apply to the authority.

(4) The authority is not subject to any provision of law enacted after the effective date of this 2019 Act with respect to any governmental entity, unless the provision specifically provides that it applies to the authority.

#### **SECTION 11. Acquisition of property.**

The Willamette Falls Locks Authority may acquire property that is necessary or convenient in carrying out any power granted to the authority.

#### **SECTION 12. Audits**

The Willamette Falls Locks Authority may conduct bi-annual independent audits at least every other year, if considered advisable by the authority. The authority may contract with independent certified public accountants and other consultants for the performance of the audits. The authority shall file any completed audits with the Division of Audits of the Secretary of State. Such audits are subject to disclosure pursuant to ORS 192.311 to 192.478.

#### **SECTION 13. Alternative retirement programs.**

Notwithstanding the provisions of ORS chapters 238 and 238A, the Willamette Falls Locks Authority may offer alternative retirement programs to its employees in addition to the Public Employees Retirement System.

#### **SECTION 14. Personnel records.**

(1) The Willamette Falls Locks Authority shall adopt policies governing access to personnel records of the authority that are less than 25 years old.

(2) Policies adopted under subsection (1) of this section must require that access to personnel records be restricted unless the president of the authority finds that the public interest in maintaining individual rights to privacy would not suffer from disclosure of such records. Access to such records may be limited to designated classes of information or persons, or to stated times and conditions, or both.

(3) The authority may not limit access to personnel records that are more than 25 years old.

(4) The authority may not limit access by an employee to the employee's personnel file or records kept by the authority.

#### **SECTION 15. Political or sectarian test prohibited.**

The Willamette Falls Locks Authority shall conduct the authority's recruitment, selection and promotion of employees on the basis of their relative ability, knowledge, experience and skills, making appointments through the consideration of qualified applicants, without regard to an individual's race, color, religion, sex, sexual orientation, national origin, marital status, age, disability, or other nonjob related factors. No political or sectarian test may be allowed or applied in the appointment of employees of the Willamette authority. Nothing in this section shall be construed to enlarge or diminish the obligations of the

authority or the rights of employees concerning claims of employment discrimination as prescribed by applicable state and federal employment discrimination laws.

#### **SECTION 16. Effect of law on agreements for borrowing money.**

Nothing in the Willamette Falls Locks Authority Act may be construed to impair in any way the obligations or agreements of the State of Oregon or any other public body with respect to bonds, certificates of participation, financing agreements or other agreements for the borrowing of money issued prior to July 1, 2019, by the State of Oregon or any other public body. The Willamette Falls Locks Authority shall take all actions necessary to ensure full compliance with all indentures, resolutions, declarations, agreements and other documents issued with respect to the bonds, certificates of participation, financing agreements or other agreements for the borrowing of money issued prior to July 1, 2019, by the State of Oregon or any other public body. The authority shall establish, in a written agreement that is subject to the approval of the State Treasurer, the responsibility of the authority for the payment of moneys sufficient to pay when due all principal, interest and any other charges on bonds, certificates of participation, financing agreements or other agreements for the borrowing of money issued prior to July 1, 2019, by the State of Oregon or any other public body for purposes related to the mission of the authority.

#### **SECTION 17. Revenue bonds.**

(1) The Willamette Falls Locks Authority may from time to time issue and sell revenue bonds in accordance with ORS chapter 287A. However, ORS 287A.150 (2) to (6) do not apply to revenue bonds issued by the authority. Such revenue bonds are not to any extent a general obligation of the authority nor a charge upon any revenues or property of the authority not specifically pledged thereto. An obligation described in this section is not an indebtedness of the State of Oregon.

(2) Revenue bonds issued by the authority pursuant to ORS chapter 287A shall be considered to be bonds of a political subdivision of the State of Oregon for the purposes of all laws of the state.

(3) The authority may issue refunding bonds of the same character and tenor as those replaced thereby pursuant to ORS 287A.360 to 287A.380.

#### **SECTION 18. Definitions for sections 16 to 21.**

As used in sections 22 to 26 of this 2019 Act:

(1) <<Credit enhancement agreement>> means any agreement or contractual relationship between the Willamette Falls Locks Authority and any bank, trust company, insurance company, surety bonding company, pension fund or other financial institution providing additional credit on or security for a financing agreement or certificates of participation.

(2) <<Financing agreement>> means a lease-purchase agreement, an installment sale agreement, a loan agreement, note agreement, short-term promissory notes, commercial papers, lines of credit or similar obligations or any other agreement to finance real or personal property that is or will be owned and operated by the authority, or to refinance previously executed financing agreements.

(3) <<Personal property>> means tangible personal property, software and fixtures.

(4) <<Property rights>> means, with respect to personal property, the rights of a secured party under ORS chapter 79, and, with respect to real property, the rights of a trustee or lender.

(5) <<Software>> means software and training and maintenance contracts related to the operation of computing equipment.

**SECTION 19. Authority; limitations.**

The Willamette Falls Locks Authority may enter into financing agreements in accordance with sections 22 to 26 of this 2019 Act, upon such terms as the authority finds to be advantageous. Amounts payable by the authority under a financing agreement are limited to funds specifically pledged, budgeted for or otherwise made available by the authority. If there are insufficient available funds to pay amounts due under a financing agreement, the lender may exercise any property rights that the authority has granted to it in the financing agreement against the property that was purchased with the proceeds of the financing agreement, and may apply the amounts so received toward payments scheduled to be made by the authority under the financing agreement.

**SECTION 20. Delegation of board authority.**

The board of directors of the Willamette Falls Locks Authority may delegate to any board member, officer or employee of the authority the power to determine maturity dates, principal amounts, redemption provisions, interest rates or methods for determining variable or adjustable interest rates, denominations and other terms and conditions of such obligations that are not determined at the time of the delegation. The board may also delegate entering into financing agreements or any other instruments authorized by law. This delegated power must be exercised subject to applicable requirements of law and such limitations and criteria as may be set forth in the delegation.

**SECTION 21. Powers regarding financing agreements and credit enhancement agreements.**

The Willamette Falls Locks Authority may:

- (1) Enter into agreements with third parties to hold financing agreement proceeds, payments and reserves as security for lenders, and to issue certificates of participation in the right to receive payments due from the authority under a financing agreement. Amounts so held shall be invested at the direction of the board of directors of the authority. Interest earned on any investments held as security for a financing agreement may, at the option of the board, be credited to the accounts held by the third party and applied in payment of sums due under a financing agreement.
- (2) Enter into credit enhancement agreements for financing agreements or certificates of participation, provided that such credit enhancement agreements shall be payable solely from funds specifically pledged, budgeted for or otherwise made available by the authority and amounts received from the exercise of property rights granted under such financing agreements.
- (3) Use financing agreements to finance the costs of acquiring or refinancing real or personal property, plus the costs of reserves, credit enhancements and costs associated with obtaining the financing.
- (4) Grant leases of real property with a trustee or lender.
- (5) Grant security interests in personal property to trustees or lenders.
- (6) Make pledges for the benefit of trustees and lenders.
- (7) Purchase fire, liability, flood and extended insurance coverage or other casualty insurance for property that is acquired, transferred or refinanced with proceeds of a financing agreement, assign the proceeds



thereof to a lender or trustee to the extent of their interest, and covenant to maintain such insurance while the financing agreement is unpaid, so long as available funds are sufficient to purchase such insurance.

## **SECTION 22. Effect of financing agreement on tax status**

A lease or financing agreement under sections 16 to 21 of this 2019 Act does not cause otherwise exempt property to be subject to property taxation. A lease or financing agreement is disregarded in determining whether property is exempt from taxation under ORS chapter 307.

## **SECTION 23.**

**646.740 Permitted activities.** The provisions of ORS 136.617, 646.705 to 646.805 and 646.990 may not be construed to make the following illegal:

(1) The activities of any labor organization or individual working men and women permitted by ORS chapters 661 to 663.

(2) The right of producers, as defined in ORS 646.515, and commercial fishermen to join, belong to and act through cooperative bargaining associations under ORS 646.515 to 646.545. For the purpose of this subsection, activities of cooperative bargaining associations and their members that are lawful under 15 U.S.C. 521 and 522 or 7 U.S.C. 291 and 292 are lawful under ORS 646.515 to 646.545.

(3) The activities of any person subject to regulation by the Public Utility Commission under ORS chapters 756 to 759 to the extent that such activities are so regulated and are lawful thereunder or the activities of any person conducted or carried out in accordance with any agreement or procedure approved as provided in 49 U.S.C. 5b or 5c.

(4) The activities of any person subject to regulation by the Director of the Department of Consumer and Business Services under ORS chapters 731 to 750 to the extent that such activities are so regulated and are lawful thereunder.

(5) The activities of any state or national banking institution or savings and loan association, and of any other lending institution, to the extent that such activities are regulated by the Director of the Department of Consumer and Business Services under ORS chapters 706 to 725 and are lawful thereunder.

(6) Any other activity specifically authorized under state law or local ordinance.

(7) The activities of any metropolitan service district formed under ORS chapter 268 and the activities of any person subject to regulation by a metropolitan service district formed under ORS chapter 268 to the extent that those activities are so regulated and are lawful thereunder.

(8) The activities of any person conducted or carried out in accordance with the terms and conditions of a certificate issued pursuant to 15 U.S.C. 4001 to 4021.

(9) The activities of a health care provider authorized by and in accordance with ORS 442.700 to 442.760 to the extent the activities are regulated and lawful under ORS 442.700 to 442.760.

(10) The negotiating activities of a dealer in agricultural commodities that are carried out and supervised under ORS 646.737 or 646.738.

(11) The negotiating activities of a dealer in Oregon seafood commodities that are carried out and supervised under ORS 646.739.

**(12) Any activity of the Willamette Falls Locks Authority, established under section 3 of this 2019 Act that is carried out in furtherance of its public mission and purpose.**