

# Enrolled House Bill 2564

Sponsored by Representatives MEEK, LEWIS, REARDON, PRUSAK; Representatives EVANS, NERON, NOBLE, POST, POWER, SALINAS, Senators KENNEMER, WAGNER (Pre-session filed.)

CHAPTER .....

AN ACT

Relating to Willamette Falls Locks Authority; creating new provisions; amending sections 1, 2 and 4, chapter 734, Oregon Laws 2017; and declaring an emergency.

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

**SECTION 1. Definition.** As used in sections 1 to 11 of this 2021 Act, “Willamette Falls Locks project” means:

- (1) The project for navigation, Willamette Falls Locks, Willamette River, Oregon, authorized by the Act of June 25, 1910 (61 P.L. 264, 36 Stat. 630, 664, chapter 382);
- (2) Any land in which the federal government had a property interest for the project described in subsection (1) of this section as of the effective date of this 2021 Act; and
- (3) Any improvements on the land described in subsection (2) of this section.

**SECTION 2. Establishment.** (1) The Willamette Falls Locks Authority is established as a public corporation and shall exercise and carry out all powers, rights and privileges that are expressly conferred upon the authority, are implied by law or are incident to such powers, rights and privileges. The authority is an independent public corporation with a statewide mission and purposes and without territorial boundaries. The authority is a governmental entity performing governmental functions and exercising governmental powers but, except as otherwise provided by law, is not a unit of local or municipal government or a state agency for purposes of state statutes or constitutional provisions.

(2) Unless otherwise provided by law, the authority is not subject to 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 to 190.490, 192.105, 200.035, 236.605 to 236.640, 243.105 to 243.585, 243.696, 278.011 to 278.120, 283.085 to 283.092, 291.050 to 291.060, 357.805 to 357.895 and 656.017 (2) and ORS chapters 182, 183, 238, 238A, 240, 270, 273, 276, 282, 283, 291, 292, 293 and 297. The authority is a contracting agency for the purposes of ORS chapters 279A, 279B and 279C and shall purchase equipment, materials, supplies and services through the Oregon Department of Administrative Services as provided in ORS 279A.140 to 279A.161 and 279A.250 to 279A.290.

(3) The mission of the authority is to establish ownership, oversight and management of the Willamette Falls Locks project, for the purposes of:

- (a) Enhancing the economic vitality of Oregon through facilitating the resiliency and navigability of the Willamette River; and

(b) Repairing, maintaining, upgrading and operating the Willamette Falls Locks project and associated properties and facilities for commercial, transportation, recreational, cultural, historic, heritage and tourism purposes.

(4) The authority shall carry out the purposes described in this section and the duties of the authority under sections 1 to 11 of this 2021 Act in the manner that, in the determination of the authority, best promotes and implements the mission of the authority. Subject to any limitations established under sections 1 to 11 of this 2021 Act, the authority may take any necessary or expedient actions to:

(a) Enter into any agreements as necessary or expedient to perform any authorized function of the authority, including but not limited to any agreements with the Assistant Secretary of the Army (Civil Works) for the United States Army Corps of Engineers or other public or private entities to:

(A) Establish ownership by the authority of the Willamette Falls Locks project;

(B) Repair, maintain, upgrade and operate the Willamette Falls Locks project and associated property and facilities; and

(C) Provide for the training of personnel in operation of the navigation channel and locks;

(b) Ensure the financial viability of the authority;

(c) Promote the Willamette Falls Locks project to industries related to or interested in the authority's business operations, properties or facilities; and

(d) Undertake improvements and maintenance activities, including dredging and channelization activities as the authority determines are necessary or expedient to ensure the continued operation and utility of the Willamette Falls Locks project as a navigation facility.

**SECTION 3. Authority members.** (1) The Willamette Falls Locks Authority shall consist of no fewer than seven and no more than 11 individuals appointed by the Governor. An authority member holds office for a term of four years but may be removed at any time at the pleasure of the Governor. Members are eligible for reappointment. Prior to the expiration of the term of a member, the Governor shall appoint a successor. If a member position becomes vacant for any reason, the Governor shall appoint a successor to fill the unexpired term.

(2) A member of the authority must be a citizen of the United States and may not be an employee of the authority. In appointing members to the authority, the Governor shall consult with the employees of the authority, if any, and shall endeavor to appoint members with experience or expertise in a variety of subjects related to the mission and purposes of the authority or with other experience or expertise that the Governor determines are important to the success of the authority. The Governor shall consider for appointment, but need not be limited to appointing, representatives of:

(a) Federally recognized Oregon Indian Tribes with treaty interests in the Willamette Falls area;

(b) Regional or municipal governments;

(c) The maritime industry;

(d) The tourism industry;

(e) Persons with experience in finance, marketing or economic development;

(f) Adjacent property owners; or

(g) Abutting energy facilities.

(3) The authority shall elect one member as chairperson and one member as vice chairperson, with terms, duties and powers as determined by the authority. The authority shall adopt bylaws establishing the required frequency of meetings and quorum requirements.

(4) A member of the authority is not entitled to compensation, but may be reimbursed as provided by the policies and procedures of the authority for any actual and necessary travel and other expenses incurred by the member in the performance of the member's official duties.

(5) Four members of the Legislative Assembly shall act as a nonvoting observers and advisors to the authority and shall be appointed as follows:

(a) One shall be appointed by the President of the Senate from among members of the Senate;

(b) One shall be appointed by the Senate Minority Leader from among members of the Senate;

(c) One shall be appointed by the Speaker of the House of Representatives from among members of the House of Representatives; and

(d) One shall be appointed by the House Minority Leader from among members of the House of Representatives.

(6) The members of the Legislative Assembly selected under subsection (5) of this section may not exercise any power, right or privilege of a member of the authority.

**SECTION 4. Initial membership.** (1) The Governor shall appoint the initial members of the Willamette Falls Locks Authority no later than 180 days after the effective date of this 2021 Act.

(2) Notwithstanding the term of office specified in section 3 of this 2021 Act, of the members first appointed by the Governor to the authority:

(a) Two shall serve for a term ending one year after the date of appointment;

(b) Two shall serve for a term ending two years after the date of appointment; and

(c) Two shall serve for a term ending three years after the date of appointment.

**SECTION 5. Authority director; status of authority director and employees.** (1) The Willamette Falls Locks Authority shall appoint an executive director. The executive director is the executive officer of the authority responsible for day-to-day operations. Subject to the supervision of the authority, the executive director is authorized to direct the affairs of the authority. The executive director serves at the discretion of the authority and shall perform such duties as the authority prescribes.

(2) The executive director may employ subordinate employees as the executive director deems reasonable for carrying out business operations and the operation of the properties and facilities of the authority, including but not limited to the operation and maintenance of the Willamette Falls Locks project. The executive director may delegate any duty, function or power of the executive director to a subordinate employee except as otherwise prescribed by the authority.

(3) The members of the authority, the executive director and the employees of the authority are not state employees and are not eligible for participation in state employee health benefit plans, state employee deferred compensation plans or the Public Employees Retirement System. The authority shall determine the compensation and benefit package for the executive director and other employees of the authority. For purposes of any laws applicable to the authority as a public corporation, including but not limited to ORS 30.260 to 30.300, the members of the authority, the executive director and the employees of the authority are officers and employees of a public body.

(4) The authority and a state agency may enter into agreements for the state agency to provide support services to the authority. If a state agency provides support services to the authority, the state agency must provide the support services at the rate that the state agency would charge to other state agencies for the services.

(5) The authority may invest in the investment pool described in ORS 294.805. For purposes of ORS 294.805 to 294.895, the executive director is a local government official.

(6) The authority may retain private legal counsel or, notwithstanding ORS 180.060, may contract for representation by the Attorney General. If the authority contracts for representation by the Attorney General, the Attorney General shall charge the authority for services at the rate charged to state agencies for similar services.

**SECTION 6. Powers and duties of authority.** (1) Except as may otherwise be provided by law, the Willamette Falls Locks Authority may, within or outside the state:

(a) Adopt, alter, amend or repeal policies, procedures or bylaws for the organization, administration, development and management of the authority.

(b) Enter into contracts and agreements involving property, goods or services with any public or private entity as the authority deems reasonable to carry out the mission and purposes of the authority or to execute any duties, functions or powers of the authority, including but not limited to:

(A) Contracts and agreements related to the operation of the Willamette Falls Locks project and associated properties and facilities;

(B) The carrying out of the business operations of the authority;

(C) The construction, repair, maintenance, seismic stabilization, rehabilitation, upgrade or insurance of authority properties and facilities; and

(D) The coordination of activities as needed with the owner of the dam and power plant licensed by the Federal Energy Regulatory Commission.

(c) Establish advisory or technical committees and otherwise consult, cooperate or coordinate with any public or private entity as the authority deems necessary or expedient to broaden opportunities for public input on or to carry out the mission and purposes or duties of the authority.

(d) Acquire, purchase, receive, hold, control, convey, sell, manage, operate, lease, license, lend, invest, improve, develop, use, dispose of and hold title in the name of the authority to property constituting the Willamette Falls Locks project and associated lands, buildings, easements and museum facilities, and any other real or personal property of any nature.

(e) Obtain any permits, approvals or permissions needed in connection with the activities of the authority.

(f) Exercise the power of eminent domain under ORS chapter 35 to acquire any right or interest in real property as necessary or expedient to ensure the repair, upgrade, operation, maintenance or access to the Willamette Falls Locks project and any associated properties and facilities.

(g) Sue and be sued in its own name.

(h) 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.

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

(j) 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.

(k) Purchase any and all insurance, operate a self-insurance program or otherwise arrange for the equivalent of insurance coverage of any nature and for the indemnity and defense of the members of the authority or any officers, agents, employees or other persons designated by the authority to carry out or to further the mission and purposes of the authority.

(L) Establish charges and fees, including but not limited to charges and fees for services by the authority and for the use, lease or rental of authority properties and facilities.

(m) Contract for law enforcement or security services for authority properties and facilities.

(n) Establish and exercise broad operational authority over the Willamette Falls Locks project and associated properties and facilities, including but not limited to establishing days and times of service and a certification program to enable self-operation of the navigation canal and locks by certified users.

(o) Establish an operations training program that provides education for all operators of the locks, including but not limited to employees and volunteers of the authority, contractors or commercial operators, to operate the locks in conformance with all safety and operational requirements.

(p) Perform any other acts that in the judgment of the authority are necessary or expedient in accomplishing the public mission and purposes described in section 2 of this 2021 Act or carrying out the powers granted by sections 1 to 11 of this 2021 Act.

(2) The Willamette Falls Locks Authority shall at all times cooperate with owners of real property that adjoins the locks, particularly the owner of the dam and power plant licensed by the Federal Energy Regulatory Commission. The authority shall make all reasonable efforts to operate the locks in a manner that does not unreasonably interfere with, impair or disturb the owners' rights to the full use and enjoyment of the owners' real property that adjoins the locks.

**SECTION 7. Creation of tax-exempt entity by authority.** (1) Pursuant to section 6 of this 2021 Act, the Willamette Falls Locks Authority may create and maintain an entity that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, as amended, for the purpose of advancing the mission of the authority.

(2) Any entity created by the authority under subsection (1) of this section shall be considered:

- (a) A unit of local government for purposes of ORS 190.003 to 190.130;
- (b) A public body for purposes of ORS 30.260 to 30.300 and 307.112;
- (c) A contracting agency for purposes of ORS 200.090; and
- (d) A public corporation for purposes of ORS 307.090.

**SECTION 8. Revenue bonds.** (1) The Willamette Falls Locks Authority may from time to time issue and sell revenue bonds in accordance with ORS chapter 287A, except that ORS 287A.150 (2) to (6) do not apply to revenue bonds issued by the authority. Revenue bonds issued by the authority 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 as security for the revenue bonds. 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, pursuant to ORS 287A.360 to 287A.380, issue refunding bonds of the same character and tenor as the revenue bonds replaced by the refunding bonds.

**SECTION 9. Financing agreements.** (1) As used in this section:

(a) "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.

(b) "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.

(c) "Personal property" means tangible personal property, software and fixtures.

(d) "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.

(e) "Software" means software and training and maintenance contracts related to the operation of computing equipment.

(2) The Willamette Falls Locks Authority may enter into financing agreements in accordance with this section, upon such terms as the authority determines to be necessary or desirable. 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 the lender 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.

(3) The authority may:

(a) 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 held pursuant to this paragraph shall be invested at the direction of the authority. Interest earned on any investments held as security for a financing agreement may, at the option of the authority, be credited to the accounts held by the third party and applied in payment of sums due under a financing agreement.

(b) Enter into credit enhancement agreements for financing agreements or certificates of participation, provided that the credit enhancement agreements must 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 the financing agreements.

(c) 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.

(d) Grant leases of real property with a trustee or lender.

(e) Grant security interests in personal property to trustees or lenders.

(f) Make pledges for the benefit of trustees and lenders.

(g) 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 the insurance while the financing agreement is unpaid, so long as available funds are sufficient to purchase such insurance.

(4) A lease or financing agreement under this section 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 10. Audits; report to Legislative Assembly.** (1) The Willamette Falls Locks Authority shall submit to periodic audits by the Secretary of State. The authority shall, no less than annually, retain a public accounting firm to examine and attest to the financial operations of the authority. The authority shall include the results of any public accounting in the annual report submitted to the Legislative Assembly under subsection (2) of this section.

(2) The authority shall, not later than April 15 of each year, file an annual report with the Governor and a committee or interim committee of the Legislative Assembly related to economic development. The report shall describe the activities and operations of the authority during the preceding calendar year.

**SECTION 11. Unauthorized use of facilities; penalty.** A person who gains or attempts to gain unauthorized access to or use of the properties or facilities of the Willamette Falls Locks Authority in violation of any use restriction or condition imposed by the authority, including assessment of any fees, commits a Class D violation. In addition to any enforcement officers specifically identified in ORS 153.005, the executive director of the Willamette Falls Locks Authority and other employees of the Willamette Falls Locks Authority may issue citations for violations of this section.

**SECTION 12.** Section 1, chapter 734, Oregon Laws 2017, is amended to read:

**Sec. 1.** (1) There is established the Willamette Falls Locks Commission for the purposes described in section 2, **chapter 734, Oregon Laws 2017**, [of this 2017 Act,] consisting of 23 members appointed as follows:

- (a) The Governor shall appoint:
- (A) One member who is the chair or a member of the Clackamas County Board of County Commissioners, pursuant to a recommendation of the board;
  - (B) One member who is the chair or a member of the Marion County Board of County Commissioners, pursuant to a recommendation of the board;
  - (C) One member who is the chair or a member of the Yamhill County Board of County Commissioners, pursuant to a recommendation of the board;
  - (D) One member who is the president or a member of the governing body of the metropolitan service district for the Portland metropolitan area, pursuant to a recommendation from the governing body;
  - (E) One member who is a representative of the Confederated Tribes of the Grand Ronde Community of Oregon, pursuant to a recommendation of the tribal council;
  - (F) One member who is a representative of a Columbia River tribe that is a party to the terms of a treaty of 1855 between the tribe and the United States of America;
  - (G) One member who is a representative of the State Parks and Recreation Department;
  - (H) One member who is a representative of the Port of Portland;
  - (I) One member who is a representative of the Department of Transportation;
  - (J) One member who is a representative of the Oregon Business Development Department;
  - (K) Pursuant to a recommendation by that city's governing body, one member who is the mayor or a member of the governing body of each of the following cities, to represent the cities' interests in the Willamette Falls navigation canal and locks:
    - (i) The City of Oregon City;
    - (ii) The City of West Linn; and
    - (iii) The City of Wilsonville;
  - (L) One member to represent the collective interests of local businesses and economic development in Clackamas County, pursuant to a recommendation of the Clackamas County Board of County Commissioners;
  - (M) One member to represent the collective interests of the tourism and recreation industries in Clackamas County, pursuant to a recommendation by the Clackamas County Board of County Commissioners;
  - (N) One member to represent the residents of Clackamas County, pursuant to a recommendation by the Clackamas County Board of County Commissions; and
  - (O) One member to represent an environmental or ecological nonprofit organization.
- (b) The President of the Senate shall appoint one member from among the members of the Senate.
- (c) The Senate Minority Leader shall appoint one member from among the members of the Senate.
- (d) The Speaker of the House of Representatives shall appoint two members from among the members of the House of Representatives.
- (e) The House Minority Leader shall appoint two members from among the members of the House of Representatives.
- (2) The term of office of each member of the commission appointed by the Governor is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on January 1 of the following year. A member is eligible for reappointment.
- (3) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective for the unexpired term.
- (4) Members of the commission are not entitled to compensation and may not be reimbursed for travel or other expenses incurred by them in the performance of their official duties.
- (5) Members of the Legislative Assembly appointed to the commission are nonvoting members of the commission and act in an advisory capacity only.

(6) The commission shall select one of its members as chairperson and another as vice chairperson, for terms and with duties and powers necessary for the performance of the functions of the offices as the commission determines.

(7) The commission may elect an executive committee to consist of three or more members. The executive committee has and may exercise all authority of the commission.

(8) Official action by the commission requires the approval of a majority of the voting members of the commission.

(9)(a) The commission shall meet [*no less than six times per year*] at times and places specified by the call of the chairperson or of a majority of the voting members of the commission. [*The commission shall include an opportunity for public comment as an item on the agenda of at least two meetings per year.*]

(b) The commission shall notify federally recognized Indian tribes and known interested parties of the dates and times of commission meetings.

(10) ORS 192.311 to 192.478 and 192.610 to 192.690 apply to the records and meetings of the commission.

**SECTION 13.** Section 2, chapter 734, Oregon Laws 2017, is amended to read:

**Sec. 2. (1) As used in this section, “Willamette Falls Locks project” has the meaning given that term in section 1 of this 2021 Act.**

[(1)] (2) The Willamette Falls Locks Commission shall:

[(a)] *Serve as a body to advise state, local and regional government agencies on the development and implementation of state policies relating to the repair, reopening, operation and maintenance of the Willamette Falls navigation canal and locks;*

[(b)] *Address issues relating to the transfer of ownership, operation and financing of the navigation canal and locks from a state, local and regional perspective;*

[(c)] *Make recommendations for, and assist in coordination of, funding responsibilities, including possible recommendations for the formation of an intergovernmental agreement between state, local, regional and federal agencies for the repair, reopening, operation and maintenance of the navigation canal and locks;*

[(d)] *Investigate a framework for the ownership, operations and management of the navigation canal and locks;*

[(e)] *Negotiate ownership, operation and management of the navigation canal and locks with the United States Army Corps of Engineers;*

[(f)] *Communicate state policies relating to the repair, reopening, operation and maintenance of the navigation canal and locks to the Oregon Congressional Delegation; and*

**(a) Serve as a body to advise the Governor in appointment of the initial members of the Willamette Falls Locks Authority pursuant to section 3 of this 2021 Act;**

**(b) Provide advice and assistance to the Governor or the Willamette Falls Locks Authority established under section 2 of this 2021 Act, as requested by the Governor or the authority, on any matters relating to the Willamette Falls Locks project and as necessary to facilitate an orderly transition from the commission to the authority of responsibilities for the development and implementation of state policies relating to the Willamette Falls Locks project; and**

[(g)] (c) Consider any other matters the commission considers necessary with respect to **advising the Willamette Falls Locks Authority on** the ownership and operation of the [*navigation canal and locks*] **Willamette Falls Locks project.**

[(2)] (3) The commission may establish advisory or technical committees as the commission considers necessary to aid and advise the commission in the performance of its functions. The committees may be continuing or temporary committees. The commission shall determine the representation, membership, terms and organization of the committees and shall appoint the members of the committees.

[(3)] (4) Oregon Solutions at Portland State University shall provide staffing and other resources as required by the commission to carry out the duties of the commission.



**SECTION 14.** Section 4, chapter 734, Oregon Laws 2017, is amended to read:

**Sec. 4.** Sections 1 and 2, **chapter 734, Oregon Laws 2017**, [of this 2017 Act] are repealed on [December 31, 2023] **June 30, 2022.**

**SECTION 15.** The section captions used in this 2021 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2021 Act.

**SECTION 16.** This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

**Passed by House May 11, 2021**

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate May 27, 2021**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M.,....., 2021

**Approved:**

.....M.,....., 2021

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2021

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Shemia Fagan, Secretary of State