

REVENUE: No revenue impact

FISCAL: Fiscal statement issued

Action: Do pass as amended, be printed engrossed and rescind subsequent referral to Committee on Ways and Means.

Vote: 7-0-2

Yeas: Berger, Bruun, Olson, Read, Rosenbaum, Witt, Barnhart

Nays:

Exc.: Butler, Gelser

Prepared By: Mazen Malik, Economist

Meeting Dates: 4/11, 4/25, 5/10, 5/16

WHAT THE BILL DOES: revises ORS 286, 287 and 288 to Include in ORS 286 the general borrowing provisions that relate to state borrowings, clarifies that all state borrowings are issued by the State Treasurer, clarifies the responsibilities of state agencies in connection with state borrowings, and streamline the process for state borrowings by eliminating unnecessary formal requirements for State Treasurer review of state borrowings. Include in ORS 287 the general borrowing provisions that relate to local government borrowings, and clarify how those provisions relate to each other. Repeal ORS 288 and incorporate relevant provisions into ORS 286 and 287. Uses modern, simplified language and definitions.

ISSUES DISCUSSED:

- The technical fixes.
- Impacts on the way of doing business
- Policy implications and relationship between governor, Legislature and State Treasurer
- Borrowing simplification
- Who uses it? Local government, state agencies
- Accumulations of statutes through the years.

EFFECT OF COMMITTEE AMENDMENTS: Rewrites the whole bill.

BACKGROUND: X

Unlike private entities, state agencies and local governments need very clear authority to borrow money. A borrowing that is done by a state agency or local government without clear legal authority can be declared *ultra vires* and void by a court. Purchasers of state and local government bonds protect themselves against this risk by requiring that government borrowers provide an “unqualified” legal opinion that the borrowing is authorized. The lawyers who give these opinions (usually described as “nationally recognized bond counsel”) are able to give unqualified opinions on the borrowings only if there is no substantial doubt that the borrowing is authorized. Because of the risk of an *ultra vires* determination and the need for unqualified opinions, there is a significant and unnecessary cost to the state and its local governments if Oregon’s borrowing statutes are ambiguous or inconsistent.

ORS Chapter 286 originally contained general provisions relating to the duties of the Office of the State Treasurer with respect to state borrowings. Many agencies, however, had authority (dating from the turn of the early and mid-1900’s) to issue bonds without oversight by the State Treasurer. The details related to agencies’ bond programs are located in various chapters dealing specifically with their bond funded programs. Beginning in the 1980’s, the State Treasurer was given an increased role in the issuance of the state’s bonds, including approving if, when and how bonds are to be issued. Many of the original statutes under which state agencies issued bonds independent of the State Treasurer’s oversight, however, were not changed. ORS Chapter 287 originally contained provisions relating to local government borrowings. Beginning roughly in 1977, when the Oregon Legislative Assembly authorized the creation of

the Oregon Municipal Debt Advisory Commission (MDAC), borrowing legislation started to appear in the form of “uniform acts” that were intended to apply to large numbers of government borrowers, often including both state agencies and local governments. Many of these provisions were codified in ORS Chapter 288.

For the last thirty years, the Oregon Legislative Assembly has been adding bits and pieces to these three chapters. The chapters lack generally applicable definitions, and terms in those chapters are often used inconsistently. Particular government bodies are occasionally left out because of drafting inconsistencies, and it is growing harder and harder to determine how different sections of these chapters relate to each other. Legislation that originally began “notwithstanding any other provision of law” or that otherwise overrode inconsistent prior legislation have been codified without those overrides, and the inconsistent statutes have, in some cases, been subsequently amended, making it even more difficult to determine what these statutes mean.

In addition, during this period there has been tremendous innovation in the capital markets. Governments often can save substantial amounts of money for their citizens if the governments take advantage of these innovations. The Oregon Municipal Debt Advisory Commission and the State Treasurer have frequently requested the Oregon Legislative Assembly to expand the borrowing powers of Oregon governments. During the last ten years, legislation granting those requests often has been in the form of bills that broadly grant authority to governments. Often those bills have combined awkwardly with the hodge-podge of old and new statutes in those chapters.