

House Bill 2199

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Presession filed (at the request of Governor Theodore R. Kulongoski for Department of Higher Education)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows State Board of Higher Education or State Treasurer to enter into financial agreements for bonds issued under Article XI-F(1) of Oregon Constitution and to pay amounts due under financial agreements from available funds authorized by Legislative Assembly.

Establishes subfund in Higher Education Bond Sinking Fund to provide for payment of amounts due under financial agreements.

Declares emergency, effective July 1, 2007.

A BILL FOR AN ACT

1
2 Relating to bonds issued under Article XI-F(1) of the Oregon Constitution; creating new provisions;
3 amending ORS 351.460; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS chapter 351.**

6 **SECTION 2. (1) As used in this section:**

7 (a) "Available funds" means funds appropriated or otherwise made available by the Leg-
8 islative Assembly for a biennium to pay amounts due during that biennium in connection
9 with a financial agreement.

10 (b) "Bond" means a bond issued under Article XI-F(1) of the Oregon Constitution.

11 (c) "Credit enhancement device" means a letter of credit, line of credit, bond insurance
12 policy, standby purchase agreement, surety bond or other device or facility used to enhance
13 the creditworthiness, liquidity or marketability of a bond.

14 (d) "Financial agreement" means an agreement for exchange of interest rates, as defined
15 in ORS 287.025, a credit enhancement device or an agreement made in connection with a
16 credit enhancement device, that is executed for one or more bonds.

17 (2) The State of Oregon, acting through the State Board of Higher Education or the State
18 Treasurer, may:

19 (a) Enter into financial agreements.

20 (b) Identify, segregate and agree to pay amounts due under financial agreements entered
21 into under this section from:

22 (A) The revenues, gifts, grants or building fees that are described in section 2, Article
23 XI-F(1) of the Oregon Constitution;

24 (B) The unexpended proceeds of the bonds for which financial agreements are executed;
25 or

26 (C) Other available funds.

27 (c) To the extent permitted by Article XI-F(1) of the Oregon Constitution, issue bonds
28 to secure the state's obligation to make payments under a financial agreement. If a bond is

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 issued under this paragraph, the bond amount shall count toward the limit described in
 2 section 1, Article XI-F(1) of the Oregon Constitution, only to the extent that it increases the
 3 amount the state is obligated to pay under other bonds.

4 (3) If the State of Oregon agrees to pay amounts due under financial agreements from
 5 available funds:

6 (a) The Chancellor of the Oregon University System shall notify the Director of the
 7 Oregon Department of Administrative Services not later than five business days after a fi-
 8 nancial agreement is executed.

9 (b) Prior to the beginning of each biennium, the chancellor shall notify the director of
 10 any amounts that the chancellor reasonably expects will be needed to be paid from available
 11 funds during that biennium for financial agreements.

12 (c) The Oregon Department of Administrative Services shall include in the Governor's
 13 budget request to the Legislative Assembly for each biennium amounts sufficient to permit
 14 the payment of all amounts that are described in the notice given by the chancellor under
 15 paragraph (b) of this subsection.

16 (d)(A) If any amounts due under financial agreements are payable from available funds
 17 and the Oregon University System does not have funds that may be lawfully expended to pay
 18 those amounts, the chancellor shall promptly certify the amounts needed to the Legislative
 19 Assembly or, if the Legislative Assembly is not then in session, to the Emergency Board.
 20 The Legislative Assembly or the Emergency Board may appropriate or otherwise provide
 21 available funds in the amounts certified by the chancellor. Any available funds so provided
 22 shall be used immediately to pay the amounts that are due under the financial agreements.

23 (B) The State of Oregon may enter into covenants in financial agreements that specify
 24 the timing and content of the chancellor's certification.

25 (e) The Legislative Assembly acknowledges its intention to provide available funds in the
 26 amounts included in the Governor's budget request pursuant to paragraph (c) of this sub-
 27 section and in the amounts certified by the chancellor pursuant to paragraph (d) of this
 28 subsection. However, a commitment of the State of Oregon in a financial agreement to pay
 29 amounts due from available funds does not obligate the Legislative Assembly or the Emer-
 30 gency Board to provide available funds to pay the amounts due. A commitment of the State
 31 of Oregon in a financial agreement to make payments of amounts due from available funds
 32 may not be construed to be a debt or liability that is prohibited by section 7, Article XI of
 33 the Oregon Constitution.

34 **SECTION 3.** ORS 351.460 is amended to read:

35 351.460. (1) The State Board of Higher Education shall maintain with the State Treasurer[,] a
 36 Higher Education Bond Sinking Fund, separate and distinct from the General Fund. The Higher
 37 Education Bond Sinking Fund shall comprise [*three*] **four** separate subfunds to provide for the pay-
 38 ment of the principal of and the interest upon the bonds issued under authority of Article XI-F(1)
 39 of the Oregon Constitution and ORS 351.350, under authority of Article XI-G of the Oregon Consti-
 40 tution and ORS 351.345, [*and*] revenue bonds issued under authority of ORS 288.855, **and amounts**
 41 **due under financial agreements entered into under section 2 of this 2007 Act.** The moneys in
 42 the sinking fund are continuously appropriated to the board for such purposes. The fund may be
 43 invested by the State Treasurer, and the earnings from such investments shall be credited to the
 44 appropriate subfunds of the fund.

45 (2) The Higher Education Bond Sinking Fund shall consist of all moneys received from ad

1 valorem taxes levied pursuant to ORS 291.445, all moneys that the Legislative Assembly may provide
 2 in lieu of such taxes, all of the net revenues received from the projects or undertakings for the fi-
 3 nancing of which the bonds were issued, including gifts, grants and building fees, such unpledged
 4 revenues of buildings and projects of like character as shall be allocated by the board, all moneys
 5 received as accrued interest upon bonds sold, all earnings from investments of the fund, **all [and**
 6 **the] proceeds of the sale of refunding bonds and all moneys that the State of Oregon has agreed**
 7 **to hold in the Higher Education Bond Sinking Fund to pay amounts due under financial**
 8 **agreements entered into under section 2 of this 2007 Act.** Moneys credited to the Higher Edu-
 9 cation Bond Sinking Fund shall be credited to the appropriate subfunds of the fund.

10 (3) The board may credit the Higher Education Bond Sinking Fund with moneys received from
 11 either a sale or interfund transfer of land, buildings and facilities. When the land, buildings or fa-
 12 cilities are sold, or the use thereof is rededicated so that a transfer from one subfund to the other
 13 is appropriate, the moneys received shall be credited to the appropriate subfund.

14 (4) The board shall apply student building fees, revenues, gifts and grants for the payment of the
 15 principal of and the interest upon the bonds issued under authority of Article XI-F(1) of the Oregon
 16 Constitution and ORS 351.350 and under authority of ORS 288.855 until such time as the proper
 17 subfund of the sinking fund and investments thereof, as supplemented by expected future income
 18 will, in the judgment of the board, be sufficient to meet in full the principal of and the interest upon
 19 all such outstanding bonds. Except for student building fees, income not thus required for the sink-
 20 ing fund shall be transferred to such other fund and account as the board shall designate. Student
 21 building fees for buildings constructed from the proceeds of bonds issued under Article XI-F(1) of the
 22 Oregon Constitution or ORS 288.855 shall be applied only to those projects authorized under Article
 23 XI-F(1) of the Oregon Constitution or ORS 288.855.

24 (5) **The board may create a subfund in the Higher Education Bond Sinking Fund to pay**
 25 **amounts due under financial agreements entered into under section 2 of this 2007 Act and**
 26 **may credit to that subfund any moneys that the State of Oregon is obligated to use to pay**
 27 **those amounts due.**

28 [(5)(a)] (6)(a) The board may not use the sinking fund for any purpose other than the purposes
 29 for which the fund was created.

30 (b) Notwithstanding paragraph (a) of this subsection, the board may transfer any surplus in the
 31 sinking fund to other funds designated by the board if a balance remains in the sinking fund from
 32 sources other than student building fees for buildings constructed from the proceeds of bonds issued
 33 under Article XI-F(1) of the Oregon Constitution and:

34 (A) The purposes for which the fund was created have been fulfilled; or

35 (B) A reserve sufficient to meet all existing and future obligations and liabilities of the fund has
 36 been set aside.

37 **SECTION 4. This 2007 Act being necessary for the immediate preservation of the public**
 38 **peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect**
 39 **July 1, 2007.**