

Senate Bill 13

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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**.

Prohibits semi-independent state agencies from borrowing money in manner that could be construed as incurring debt or obligation of State of Oregon or as pledge of full faith and credit or taxing power of State of Oregon.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to borrowing by semi-independent state agencies; creating new provisions; amending ORS
3 182.466, 284.335, 284.365, 286A.001 and 377.840; and declaring an emergency.

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

5 **SECTION 1.** ORS 182.466 is amended to read:

6 182.466. (1) In addition to other powers granted by ORS 182.456 to 182.472 and by the statutes
7 specifically applicable to a board, a board may:

8 [(1)] (a) Sue and be sued in its own name.

9 [(2)] (b) Notwithstanding ORS 279.835 to 279.855 and ORS chapters 279A, 279B and 279C, enter
10 into contracts and acquire, hold, own, encumber, issue, replace, deal in and with and dispose of real
11 and personal property.

12 [(3)] (c) Notwithstanding ORS 670.300, fix a per diem amount to be paid to board members for
13 each day or portion thereof during which the member is actually engaged in the performance of of-
14 ficial duties. Board members may also receive actual and necessary travel expenses or other ex-
15 penses actually incurred in the performance of their duties. If an advisory council or peer review
16 committee is established under the law that governs the board, the board may also fix and pay
17 amounts and expenses for members thereof.

18 [(4)] (d) Set the amount of any fee required by statute and establish by rule and collect other
19 fees as determined by the board. Fees shall not exceed amounts necessary for the purpose of car-
20 rying out the functions of the board. Notwithstanding ORS 183.335 and except as provided in this
21 [subsection] **paragraph**, a board shall hold a public hearing prior to adopting or modifying any fee
22 without regard to the number of requests received to hold a hearing. A board shall give notice to
23 all licensees of the board prior to holding a hearing on the adoption or modification of any fee. A
24 board may adopt fees in conjunction with the budget adoption process described in ORS 182.462.

25 [(5)] (e) Subject to any other statutory provisions, adopt procedures and requirements governing
26 the manner of making application for issuance, renewal, suspension, revocation, restoration and re-
27 lated activities concerning licenses that are under the jurisdiction of a board.

28 **(2) If a semi-independent state agency is authorized by a provision of law other than this**
29 **subsection to borrow money by entering into a contract, by encumbering real or personal**

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 **property or by any other manner:**

2 (a) **The obligation of the semi-independent state agency is not a debt, liability or general**
 3 **obligation of the State of Oregon and neither the full faith and credit nor the taxing power**
 4 **of the State of Oregon may be pledged to secure or pay the obligation incurred by the semi-**
 5 **independent state agency.**

6 (b) **The State Treasurer and the State of Oregon do not have an obligation to pay bond-**
 7 **related costs for an obligation incurred by a semi-independent state agency. A holder of an**
 8 **obligation incurred by a semi-independent state agency does not have the right to compel the**
 9 **exercise of the taxing power of the State of Oregon to pay bond-related costs.**

10 (3) **Subsection (2) of this section applies to semi-independent state agencies:**

11 (a) **Listed in ORS 182.454;**

12 (b) **Subject to ORS 182.456 to 182.472; or**

13 (c) **Denominated as either a semi-independent state agency or a semi-independent agency**
 14 **in ORS 377.835 or 421.344 or in any other statute without regard to the date of enactment**
 15 **or amendment of the statute unless the agency is explicitly excepted from the prohibition in**
 16 **subsection (2) of this section.**

17 **SECTION 2.** ORS 284.335 is amended to read:

18 284.335. (1) Except as provided in subsection (2) of this section, when carrying out the duties,
 19 functions and powers of the Oregon Film and Video Office, the director of the office may contract
 20 with any state agency for the performance of such duties, functions and powers that the director
 21 considers appropriate.

22 (2) The director of the office [*shall not, without*] **may, only with** the prior approval of the Film
 23 and Video Board:

24 (a) Award any contract for goods or professional services in excess of \$25,000;

25 (b) Authorize any expenditure of moneys in excess of \$25,000;

26 (c) Sell or otherwise dispose of real or personal property valued in excess of \$25,000;

27 (d) Commence a civil legal action or proceeding;

28 (e) Sell, transfer and convey property to a buyer or lease property to a tenant;

29 (f) Borrow money and give guarantees;

30 (g) Finance, conduct or cooperate in the financing of facilities and projects to assist the film,
 31 video and emerging media industries; or

32 (h) In accordance with ORS chapter 183, adopt rules necessary for the administration of laws
 33 that the office is charged with administering.

34 (3) The Film and Video Board shall approve the lease of property to a tenant only when the sale,
 35 transfer or conveyance of the property cannot be effected with reasonable promptness or at a rea-
 36 sonable price.

37 (4) The [*Film and Video Board shall not allow the director to*] **director of the office may not**
 38 **borrow money or give guarantees under subsection (2)(f) of this section unless the [*indebtedness or***
 39 ***other*]** obligations of the office **attributable to the borrowing** are payable solely out of [*its*] **the**
 40 **office's** own resources. [*and do not constitute a pledge of the full faith and credit of the State of*
 41 *Oregon or any of the revenues of this state.*] **If the director of the office borrows moneys or**
 42 **makes guarantees under subsection (2)(f) of this section:**

43 (a) **The obligation of the office is not a debt, liability or general obligation of the State**
 44 **of Oregon and neither the full faith and credit nor the taxing power of the State of Oregon**
 45 **may be pledged to secure or pay the obligation incurred by the office.**

1 **(b) The State Treasurer and the State of Oregon do not have an obligation to pay bond-**
 2 **related costs for an obligation incurred by the office. A holder of an obligation incurred by**
 3 **the office does not have the right to compel the exercise of the taxing power of the State**
 4 **of Oregon to pay bond-related costs.**

5 (5) The **director of the** office shall file with the Governor and the Legislative Assembly a
 6 biennial report of the activities and operations of the office. The report shall include a full and
 7 complete reporting of the financial activities and transactions of the office during the biennium, in-
 8 cluding at least the information required under ORS 284.365 (5).

9 **SECTION 3.** ORS 284.365 is amended to read:

10 284.365. (1) All moneys collected, **borrowed**, received or appropriated to the Oregon Film and
 11 Video Office shall be deposited in an account established in a **bank depository or a credit union**
 12 **depository** insured by the Federal Deposit Insurance Corporation or the National Credit Union
 13 Share Insurance Fund. In a manner consistent with the requirements of ORS 295.001 to 295.108, the
 14 chairperson of the Film and Video Board shall [*insure*] **ensure** that sufficient collateral secures any
 15 amount of funds on deposit that exceeds the limits of the coverage of the Federal Deposit Insurance
 16 Corporation or the National Credit Union Share Insurance Fund. Subject to approval by the chair-
 17 person, the board may invest moneys collected, **borrowed** or received by the office. Investments
 18 made by the board are limited to the types of investments listed in ORS 294.035 (3)(a) to (i). Interest
 19 earned from any amounts invested must be made available to the office in a manner consistent with
 20 the biennial budget approved by the board.

21 (2) Subject to the approval of the director of the office, all necessary expenses of the office and
 22 the board must be paid from the moneys collected, **borrowed**, appropriated or earned by the office.

23 (3) The office shall adopt a budget on a biennial basis using the classifications of expenditures
 24 and revenues required by ORS 291.206 (1). The budget is not subject to review and approval by the
 25 Legislative Assembly or to modification by the Emergency Board or the Legislative Assembly.
 26 However, the budget must be included in the biennial report required by ORS 284.335 (5).

27 (4) The board shall adopt a budget only after holding a public hearing on the proposed budget.
 28 At least 15 days prior to any public hearing on the proposed budget, the board shall give notice of
 29 the hearing to all persons known to be interested in the proceedings of the board and to any person
 30 who requests notice.

31 (5) All expenditures from the account established for the office under subsection (1) of this sec-
 32 tion are exempt from any state expenditure limitation. The office shall follow generally accepted
 33 accounting principles and keep such financial and statistical information that is necessary to com-
 34 pletely and accurately disclose the financial condition and financial operations of the office as may
 35 be required by the Secretary of State.

36 [*(6) As used in this section, "depository" has the meaning given that term in ORS 295.001.*]

37 **SECTION 4.** ORS 286A.001 is amended to read:

38 286A.001. As used in this chapter:

39 (1) "Agreement for exchange of interest rates" means a contract, or an option or forward com-
 40 mitment to enter into a contract, for the exchange of interest rates that provides for:

41 (a) Payments based on levels of or changes in interest rates; or

42 (b) Provisions to hedge payment, rate, spread or similar exposure including, but not limited to,
 43 an interest rate floor or cap or an option, put or call.

44 (2) "Bond":

45 (a) Means a contractual undertaking or instrument of the State of Oregon to repay borrowed

1 moneys.

2 (b) Does not mean a financing agreement, as defined in ORS 283.085, if the principal amount of
3 the agreement is \$100,000 or less, or a credit enhancement device.

4 (3) “Counterparty” means an entity with whom the State of Oregon enters into an agreement for
5 exchange of interest rates.

6 (4) “Credit enhancement device”:

7 (a) Means a letter of credit, line of credit, standby bond purchase agreement, bond insurance
8 policy, reserve surety bond or other device or facility used to enhance the creditworthiness, liquidity
9 or marketability of bonds or agreements for the exchange of interest rates; and

10 (b) Does not mean a bond.

11 (5) “Credit enhancement device fee” means a payment required to be made to the provider of a
12 credit enhancement device securing a bond or securing an agreement for the exchange of interest
13 rates.

14 (6) “General obligation bond” means a bond that constitutes indebtedness of the state under
15 section 7, Article XI of the Oregon Constitution, and that is exempt from the \$50,000 limitation on
16 indebtedness set forth in that section.

17 (7) “Operative document” means a bond declaration, trust agreement, indenture, security
18 agreement or other document in which the State of Oregon pledges property as security for an ob-
19 ligation, as defined in ORS 286A.100.

20 (8) “Refunding bond” means a bond of the State of Oregon that is issued to refund another bond,
21 regardless of whether the refunding is on a current, advance, forward delivery, synthetic or other
22 basis.

23 (9) “Related agency” means the state agency that requests the State Treasurer to issue bonds
24 pursuant to ORS 286A.025 or for which the State Treasurer has issued bonds.

25 (10) “Related bond” means a bond for which the State of Oregon enters into an agreement for
26 exchange of interest rates.

27 (11) “Revenue” means all fees, tolls, excise taxes, assessments, property taxes and other taxes,
28 rates, charges, rentals and other income or receipts derived by a state agency or to which a state
29 agency is entitled.

30 (12) “Revenue bond” means a bond of the State of Oregon that is not a general obligation bond.

31 (13) “State agency”:

32 (a) Includes a statewide elected officer, board, commission, department, division, authority or
33 other entity, without regard to the designation given to the entity, that is within state government,
34 as defined in ORS 174.111; and

35 (b) Does not include:

36 (A) A statewide elected judge;

37 (B) The State Treasurer;

38 (C) A local government, as defined in ORS 174.116;

39 (D) The Oregon Health and Science University;

40 (E) A special government body, as defined in ORS 174.117, except to the extent a special gov-
41 ernment body must be considered a state agency in order to achieve the purposes of Article XI-K
42 of the Oregon Constitution; or

43 (F) A semi-independent state agency listed in ORS 182.454[, 377.835 or 674.305, or any other state
44 agency denominated by statute as a semi-independent state agency.] **or denominated as either a**
45 **semi-independent state agency or a semi-independent agency in ORS 377.835 or 421.344 or in**

1 **any other statute without regard to the date of enactment or amendment of the statute**
 2 **unless the agency is explicitly included in the definition of “state agency” in this subsection.**

3 (14) “Termination payment” means the amount payable under an agreement for exchange of in-
 4 terest rates by one party to another party as a result of the termination, in whole or part, of the
 5 agreement prior to the expiration of the stated term.

6 **SECTION 5.** ORS 377.840, as amended by section 16, chapter 30, Oregon Laws 2010, is amended
 7 to read:

8 377.840. (1) All moneys collected, borrowed or received by the Travel Information Council shall
 9 be deposited into a Travel Information Council account established in a **bank depository or a credit**
 10 **union depository** insured by the Federal Deposit Insurance Corporation or the National Credit
 11 Union Share Insurance Fund. In a manner consistent with the requirements of ORS 295.001 to
 12 295.108, the chairperson of the council shall [*insure*] **ensure** that sufficient collateral secures any
 13 amount of funds on deposit that exceeds the limits of the coverage of the Federal Deposit Insurance
 14 Corporation or the National Credit Union Share Insurance Fund. Subject to the chairperson’s ap-
 15 proval, the council may invest moneys collected, borrowed or received by the council. Investments
 16 made by the council are limited to the types of investments listed in ORS 294.035. Interest earned
 17 from any amounts invested shall be made available to the council in a manner consistent with the
 18 council’s approved biennial budget.

19 (2) Subject to the approval of the chairperson or director of the Travel Information Council, all
 20 necessary council expenses shall be paid from the moneys collected, borrowed or earned by the
 21 council.

22 (3) Upon approval of a majority of the Travel Information Council, the [*director*] **council** may
 23 borrow money. The council may not borrow an amount that exceeds the estimated revenues from
 24 amounts collected, received or earned by the council for the year.

25 (4) The Travel Information Council may not borrow money under subsection (3) of this section
 26 unless the [*indebtedness or other*] obligations of the council attributable to the borrowing are paya-
 27 ble solely out of the council’s own resources. [*Such indebtedness or other obligations of the council*
 28 *do not constitute a pledge of the full faith and credit of the State of Oregon or any of the revenues of*
 29 *this state.*] **If the council borrows moneys under subsection (3) of this section:**

30 (a) **The obligation of the council is not a debt, liability or general obligation of the State**
 31 **of Oregon and neither the full faith and credit nor the taxing power of the State of Oregon**
 32 **may be pledged to secure or pay the obligation incurred by the council.**

33 (b) **The State Treasurer and the State of Oregon do not have an obligation to pay bond-**
 34 **related costs for an obligation incurred by the council. A holder of an obligation incurred by**
 35 **the council does not have the right to compel the exercise of the taxing power of the State**
 36 **of Oregon to pay bond-related costs.**

37 (5)(a) The Travel Information Council shall adopt a budget on a biennial basis using the classi-
 38 fications of expenditures and revenues required by ORS 291.206 (1). However, the budget shall not
 39 be subject to review and approval by the Legislative Assembly or to future modification by the
 40 Emergency Board or Legislative Assembly.

41 (b) The council shall adopt a budget only after a public hearing thereon. At least 15 days prior
 42 to any public hearing on the budget, the council shall give notice of the hearing to all persons
 43 known to be interested in the proceedings of the council and to any person who requests notice.

44 (6) All expenditures from the Travel Information Council account are exempt from any state
 45 expenditure limitation. The Travel Information Council shall follow generally accepted accounting

1 principles and keep such other financial and statistical information as may be necessary to com-
2 pletely and accurately disclose the financial condition and financial operations of the council as may
3 be required by the Secretary of State.

4 [(7) As used in this section, "depository" has the meaning given in ORS 295.001.]

5 **SECTION 6. If Oregon Corrections Enterprises is authorized by a provision of law other**
6 **than this section to borrow money in any manner:**

7 (1) **The obligation of Oregon Corrections Enterprises is not a debt, liability or general**
8 **obligation of the State of Oregon and neither the full faith and credit nor the taxing power**
9 **of the State of Oregon may be pledged to secure or pay the obligation incurred by Oregon**
10 **Corrections Enterprises.**

11 (2) **The State Treasurer and the State of Oregon do not have an obligation to pay bond-**
12 **related costs for an obligation incurred by Oregon Corrections Enterprises. A holder of an**
13 **obligation incurred by Oregon Corrections Enterprises does not have the right to compel the**
14 **exercise of the taxing power of the State of Oregon to pay bond-related costs.**

15 **SECTION 7. Section 6 of this 2011 Act and the amendments to ORS 182.466, 284.335,**
16 **284.365, 286A.001 and 377.840 by sections 1 to 5 of this 2011 Act apply to money borrowed by**
17 **a semi-independent state agency on or after the effective date of this 2011 Act.**

18 **SECTION 8. This 2011 Act being necessary for the immediate preservation of the public**
19 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
20 **on its passage.**

21 _____