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# MEMORANDUM

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**To:** Capital Construction Subcommittee

**From:** Paul Siebert, Legislative Fiscal Office  
(503) 986-1843

**Date:** July 3, 2013

**Subject:** SB 266-A  
Work Session Recommendations

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Senate Bill 266 creates a process for the Oregon University System and its seven public universities to enter into financing agreements of over \$100,000 without prior approval from the Department of Administrative Services (DAS). The bill also makes the State Board of Higher Education's policy on limiting total debt service payments applicable to these financing agreements.

The –A4 amendments, original staff measure summary, revenue impact statement, and fiscal impact statement are available on the Oregon Legislative Information System (OLIS). The measure history is also available on OLIS.

## Amendment

The –A4 amendment to the measure clarifies that state agencies are still subject to DAS approval before for entering into financing agreements over \$100,000.

## **Motion #1: Move the –A4 amendment to SB 266.**

## Measure to Full

LFO recommends the measure be moved to the full Committee on Joint Ways and Means.

## **Motion #2: Move SB 266 to the full committee with a “do pass” recommendation, as amended.**

## Assignment of Carriers

Full: \_\_\_\_\_  
2nd Chamber: \_\_\_\_\_

**FISCAL IMPACT OF PROPOSED LEGISLATION**

**Measure: SB 266 A4**

Seventy-Seventh Oregon Legislative Assembly – 2013 Regular Session  
Legislative Fiscal Office

*Only Impacts on Original or Engrossed  
Versions are Considered Official*

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Prepared by: Tim Walker  
Reviewed by: Paul Siebert  
Date: 07/02/2013

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**Measure Description:**

Creates individualized process for Oregon University System to enter into financing agreements.

**Government Unit(s) Affected:**

Oregon University System (OUS)

**Summary of Expenditure Impact:**

See Analysis.

**Local Government Mandate:**

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

**Analysis:** The bill makes substantive changes to the system the Oregon University System (OUS) uses to enter into financing agreements. OUS currently must receive Department of Administrative Services approval to enter into financial agreements such as, lease purchase agreements, installment sale agreements, loan agreements and any agreements that will finance real or personal property that is owned or operated by OUS. The –A4 amendment clarifies that state agencies must still get approval from DAS for financing agreements.

**PROPOSED AMENDMENTS TO  
A-ENGROSSED SENATE BILL 266**

1 On page 1 of the printed A-engrossed bill, line 2, after “283.089” delete the  
2 comma.

3 In line 3, delete “286A.001”.

4 Delete lines 5 through 27 and delete pages 2 through 7 and insert:

5 **“SECTION 1. (1) As used in this section:**

6 **“(a) ‘Financing agreement’ means a lease purchase agreement, an**  
7 **installment sale agreement, a loan agreement or any other agreement**  
8 **entered into under this section:**

9 **“(A) To finance real or personal property that is, or will be, owned**  
10 **or operated by the Oregon University System;**

11 **“(B) To finance infrastructure, including but not limited to tele-**  
12 **communications systems, systems for water, sewage, electricity,**  
13 **steam or natural gas and other equipment or improvements that are**  
14 **necessary or appropriate to support a facility that is, or will be, owned**  
15 **or operated by the Oregon University System; or**

16 **“(C) To refinance financing agreements previously executed pursu-**  
17 **ant to this section or under ORS 283.085 to 283.092 for the benefit of**  
18 **the Oregon University System.**

19 **“(b) ‘Higher education financing revenue’ means:**

20 **“(A) Tuition, fees and charges collected by the Oregon University**  
21 **System, or by a public university in the system; and**

22 **“(B) Moneys appropriated, allocated or otherwise made available by**

1 the Legislative Assembly to the Oregon University System, or a public  
2 university in the system, that are lawfully available to pay costs re-  
3 lated to financing agreements entered into pursuant to this section.

4 “(2) The Chancellor of the Oregon University System may enter into  
5 financing agreements under this section on terms the chancellor finds  
6 to be advantageous to the Oregon University System if the debt ser-  
7 vice, when combined with existing debt service that is paid from  
8 higher education financing revenues of the Oregon University System,  
9 does not exceed the maximum allowed by State Board of Higher Edu-  
10 cation policy.

11 “(3) A financing agreement entered into by the Oregon University  
12 System under this section is subject to the following requirements:

13 “(a) The Oregon University System may not pay amounts due under  
14 the financing agreement from any source other than higher education  
15 financing revenue. If higher education financing revenue is not suffi-  
16 cient to pay amounts due under a financing agreement, the lender  
17 may exercise property rights granted by the Oregon University System  
18 in the financing agreement against the property that was purchased  
19 with proceeds of the financing agreement and may apply the amounts  
20 received to payments scheduled to be made under the financing  
21 agreement.

22 “(b) The Oregon University System may not grant property rights  
23 in property unless the property is being acquired, substantially im-  
24 proved or refinanced with proceeds of a financing agreement or the  
25 property is land on which financed improvements are located.

26 “(c) The State Treasurer shall review and approve, pursuant to  
27 rules adopted by the State Treasurer, the terms and conditions of fi-  
28 nancing agreements to be entered into by the Oregon University Sys-  
29 tem.

30 “(d) A financing agreement is not an obligation of any agency of

1 **the State of Oregon other than the Oregon University System.**

2 **“(4) A financing agreement entered into by the Oregon University**  
3 **System under this section is not:**

4 **“(a) Subject to ORS 283.085 to 283.092.**

5 **“(b) A bond, as defined in ORS 286A.001 or 287A.001, subject to the**  
6 **provisions of ORS chapter 286A or 287A.**

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

8 **“(a) ‘Financing agreement’ has the meaning given that term in ORS**  
9 **283.085.**

10 **“(b) ‘State agency’ has the meaning given that term in ORS 283.089.**

11 **“(2) Except as provided in section 1 of this 2013 Act:**

12 **“(a) If authorized by a provision of law other than ORS 283.085 to**  
13 **283.092, a state agency may enter into a financing agreement with a**  
14 **principal amount of \$100,000 or less.**

15 **“(b) Notwithstanding any authority in a provision of law other than**  
16 **ORS 283.085 to 283.092, a state agency may not enter into a financing**  
17 **agreement in an amount that exceeds \$100,000.**

18 **“SECTION 3. ORS 283.085 is amended to read:**

19 **“283.085. As used in ORS 283.085 to 283.092:**

20 **“(1) ‘Available funds’ means funds appropriated or otherwise made avail-**  
21 **able by the Legislative Assembly to pay amounts due under a financing**  
22 **agreement for the fiscal period in which the payments are due, [together with**  
23 **any] unexpended proceeds of the financing agreement[, and any] **and** reserves**  
24 **or other amounts [which] **that** have been deposited in trust to pay amounts**  
25 **due under the financing agreement.**

26 **“(2) ‘Credit enhancement agreement’ means any agreement or contractual**  
27 **relationship between the state and any bank, trust company, insurance com-**  
28 **pany, surety bonding company, pension fund or other financial institution**  
29 **providing additional credit on or security for a financing agreement or cer-**  
30 **tificates of participation authorized by ORS 283.085 to 283.092.**

1        “[~~(3)~~ ‘Director’ means the Director of the Oregon Department of Adminis-  
2        trative Services.]”

3        “[~~(4)(a)~~] **(3)** ‘Financing agreement’ means a lease purchase agreement, an  
4        installment sale agreement, a loan agreement or any other agreement:

5        “[~~(A)~~] **(a)** To finance real or personal property that is or will be owned  
6        and operated by the state or any of its agencies;

7        “[~~(B)~~] **(b)** To finance infrastructure, **including but not limited to tele-**  
8        **communications systems, systems for water, sewage, electricity,**  
9        **steam or natural gas and other equipment or improvements that are**  
10       **necessary or appropriate to support** [*related to*] a facility that is, **or will**  
11       **be,** owned [*and*] **or** operated by the state;

12       “[~~(C)~~] **(c)** To finance infrastructure components that are, **or will be,**  
13       owned or operated by a local government agency of this state if the Director  
14       **of the Oregon Department of Administrative Services** determines that  
15       financing the infrastructure [*will facilitate*] **facilitates** the construction or  
16       operation of an adult or juvenile corrections facility or a public safety  
17       training facility owned [*and*] **or** operated by the state or any of its agencies;

18       “[~~(D)~~] **(d)** To finance all or a portion of the state’s pension liabilities for  
19       retirement, health care or disability benefits, in an amount that produces net  
20       proceeds that do not exceed the State Treasurer’s estimate of those liabilities  
21       based on information provided to the State Treasurer by the Public Em-  
22       ployees Retirement System; or

23       “[~~(E)~~] **(e)** To refinance previously executed financing agreements.

24       “[~~(b)~~ As used in this subsection, ‘infrastructure’ includes, but is not limited  
25       to, sewer and water systems and road improvements.]”

26       **“(4) ‘Financing costs’ means costs or expenses that the director**  
27       **determines are necessary or desirable in connection with entering into**  
28       **financing agreements and maintaining the certificate of participation**  
29       **program, including but not limited to payment of:**

30       **“(a) Amounts due under financing agreements;**

1       **“(b) Costs and obligations the director or any other agency of the**  
2 **state incurs in connection with the exercise of a power granted by ORS**  
3 **283.085 to 283.092; and**

4       **“(c) Amounts due in connection with the investment of proceeds**  
5 **of financing agreements.**

6       “(5) ‘Personal property’ means tangible personal property, software and  
7 fixtures.

8       “(6) ‘Property rights’ means, with respect to personal property, the rights  
9 of a secured party under ORS chapter 79, and, with respect to real property,  
10 the rights of a trustee or lender under a lease authorized by ORS 283.089  
11 (1)(e).

12       “(7) ‘Software’ means software and training and maintenance contracts  
13 related to the operation of computing equipment.

14       “[(8) ‘Treasurer’ means the State Treasurer.]

15       **“SECTION 4.** ORS 283.087 is amended to read:

16       **“283.087. (1)** *[With the approval of the State Treasurer,]* The Director of  
17 the Oregon Department of Administrative Services may enter into financing  
18 agreements in accordance with ORS 283.085 to 283.092[, *and may exercise the*  
19 *powers granted to a related agency, as defined in ORS 286A.001, by ORS*  
20 *chapter 286A for bonds in connection with those financing agreements upon*  
21 *such terms as the director and the treasurer find to be advantageous to the*  
22 *state].*

23       **“(2) Financing agreements [shall be] entered into under ORS 283.085**  
24 **to 283.092 are** subject to the following limitations:

25       “[(1)] (a) *[Amounts payable by the state under a financing agreement shall*  
26 *be limited to available funds. In no circumstance shall the state be obligated*  
27 *to]* **Neither the director nor any other agency of the state may pay**  
28 amounts due under a financing agreement from any source other than  
29 available funds. If there are insufficient available funds to pay amounts due  
30 under a financing agreement, the lender may exercise any property rights

1 which the state has granted to it in the financing agreement, against the  
2 property which was purchased with the proceeds of the financing agreement,  
3 and apply the amounts so received toward payments scheduled to be made  
4 by the state under the financing agreement.

5 *“(2) No property rights may be granted in property unless the property is  
6 being acquired, substantially improved or refinanced with the proceeds of a  
7 financing agreement, or is land on which such property is located.]”*

8 *“(3) The principal amount of financing agreements entered into by the state  
9 pursuant to ORS 283.085 to 283.092 shall be treated as an amount of bonds  
10 and is subject to ORS 286A.035.]”*

11 *“(4) The limitations of subsection (3) of this section shall not apply to fi-  
12 nancing agreements which are used to refinance previously executed financing  
13 agreements. The expenditure of funds used to finance previously executed fi-  
14 nancing agreements and pay the costs incurred to issue the new financing  
15 agreements shall be recorded using administrative budget limitations.]”*

16 *“(5) The state or any state agency shall not enter into financing agreements  
17 under any provision of law other than ORS 283.085 to 283.092 if the principal  
18 amount of the financing agreement, together with the principal amount of any  
19 financing agreement previously issued by the state or a state agency for the  
20 same project, exceeds \$100,000.]”*

21 **“(b) Neither the director nor any other agency of the state may  
22 grant property rights in property unless the property is being acquired,  
23 substantially improved or refinanced with proceeds of a financing  
24 agreement entered into under ORS 283.085 to 283.092 or the property  
25 is land on which improvements financed, in whole or in part, under  
26 ORS 283.085 to 283.092 are located.**

27 **“(c) A financing agreement with a principal amount in excess of  
28 \$100,000 is subject to the requirements of ORS chapter 286A, and the  
29 director may exercise the powers granted to a related agency, as de-  
30 fined in ORS 286A.001, with respect to a financing agreement described**



1 in this paragraph.

2 “(3) The expenditure of funds used to finance previously executed  
3 financing agreements or to pay costs incurred to issue a financing  
4 agreement must be recorded using administrative budget limitations.

5 “(4) For purposes of this section, the principal amount of a financ-  
6 ing agreement, other than a financing agreement to refinance a fi-  
7 nancing agreement, exceeds \$100,000 if the principal amount, when  
8 combined with the principal amount of a financing agreement, other  
9 than a financing agreement to refinance a financing agreement, pre-  
10 viously issued for the same project exceeds \$100,000.

11 “[6] (5) Upon the request and with the approval of the Chief Justice of  
12 the Supreme Court or the State Court Administrator, the Director of the  
13 Oregon Department of Administrative Services may enter into financing  
14 agreements in accordance with ORS 283.085 to 283.092[,] on behalf of the  
15 Judicial Department.

16 “**SECTION 5.** ORS 283.089 is amended to read:

17 “283.089. (1) [*With the approval of the State Treasurer,*] The Director of  
18 the Oregon Department of Administrative Services may:

19 “(a) Enter into agreements with trustees to hold financing agreement  
20 proceeds, payments and reserves as security for lenders, and to issue certif-  
21 icates of participation in the right to receive payments due from the state  
22 under a financing agreement. **The trustee shall invest** amounts held [*with*  
23 *a trustee shall be invested*] by the trustee at the direction of the State  
24 Treasurer. Interest earned on any investments held by a trustee as security  
25 for a financing agreement [*may*], at the option of the director, **may** be cred-  
26 ited to the accounts held by the trustee and applied in payment of sums due  
27 under a financing agreement.

28 “(b) Enter into credit enhancement agreements for financing agreements  
29 or certificates of participation, provided that [*such*] **amounts due under**  
30 credit enhancement agreements [*shall be*] **are** payable solely from available

1 funds and amounts received from the exercise of property rights granted  
2 under *[such]* **the** financing agreements.

3 “(c) Use the gross proceeds of financing agreements for the purposes de-  
4 scribed in ORS 283.085 *[(4)]* **(3)** and to pay the costs of reserves, credit en-  
5 hancements and other costs associated with issuing, administering and  
6 maintaining the financing.

7 “(d) Use a single financing agreement to finance property to be used by  
8 multiple state agencies.

9 “(e) Subject to ORS 283.087 (2)**(b)**, grant leases of real property with a  
10 trustee or lender. *[Such]* **The** leases may be for a term *[which]* **that** ends on  
11 the date on which all amounts due under a financing agreement have been  
12 paid or provision for payment has been made, or 10 years after the last  
13 scheduled payment under a financing agreement, whichever is later. *[Such]*  
14 **The** leases may grant the trustee or lender the right to evict the state and  
15 exclude it from possession of the real property for the term of the lease if  
16 the state fails to pay when due the amounts scheduled to be paid under a  
17 financing agreement or otherwise defaults under a financing agreement.  
18 Upon default, the trustee or lender may sublease the *[land]* **real property**  
19 to third parties and apply any rentals toward payments scheduled to be made  
20 under a financing agreement.

21 “(f) Subject to ORS 283.087 (2)**(b)**, grant security interests in personal  
22 property to trustees or lenders. *[Such]* **The** security interests *[shall]* attach  
23 and *[be]* **are** perfected on the date the state takes possession of the personal  
24 property, or the date the lender advances money under a financing agree-  
25 ment, whichever is later. A security interest authorized by this section *[shall*  
26 *have]* **has** priority over all other liens and claims. Upon default, the secured  
27 party *[shall have]* **has** the rights and remedies available to a secured party  
28 under ORS chapter 79 for a first, perfected security interest in goods and  
29 fixtures. *[No later than]* **Within** 10 days after a security interest authorized  
30 by this section attaches, the state shall cause a financing statement for the

1 security interest to be filed with the Secretary of State in the same manner  
2 as financing statements are filed for goods[;]. However, failure to file [*such*  
3 *a statement shall*] **the statement does** not affect the perfection of the secu-  
4 rity interest.

5 “(g) Pledge for the benefit of trustees and lenders any amounts [*which*]  
6 **that** are deposited with a trustee in accordance with a financing agreement.  
7 The pledge [*shall be*] **is** valid and binding from the time it is made[, *the*  
8 *amounts so pledged shall immediately be*]. **Amounts pledged are** subject to  
9 the lien of the pledge **immediately** without filing, physical delivery or other  
10 act[, *and*]. The lien of the pledge [*shall be*] **is** superior to all other claims  
11 and liens of any kind whatsoever.

12 “(h) Bill any state agency that benefits from a financing agreement for  
13 an appropriate share of the financing costs on a monthly or other periodic  
14 basis, and deposit payments received in connection with the billings with a  
15 trustee as security for a financing agreement. Any state agency receiving  
16 such a bill shall pay the amounts billed from the first amounts legally  
17 available to it. The director shall allocate in appropriate shares the financ-  
18 ing costs of a financing agreement entered into for the purpose described in  
19 ORS 283.085 [(4)(a)(D)] **(3)(d)** among all state agencies based on their payroll  
20 costs.

21 “(i) Purchase fire and extended coverage or other casualty insurance for  
22 property [*which is*] acquired or refinanced with proceeds of a financing  
23 agreement, assign the proceeds [*thereof*] **of the insurance** to a lender or  
24 trustee to the extent of their interest[, ] and covenant to maintain [*such*] **the**  
25 insurance while the financing agreement is unpaid, so long as available  
26 funds are sufficient to purchase [*such*] **the** insurance.

27 “(2) As used in this section,[:]

28 “[*a*] ‘*Financing costs*’ means the costs or expenses that the State Treasurer  
29 or the Director of the Oregon Department of Administrative Services deter-  
30 mines are necessary or desirable in connection with entering into financing

1 *agreements and maintaining the certificate of participation program, including*  
2 *but not limited to paying:]*

3 “[*(A) Amounts due under financing agreements;*]

4 “[*(B) Costs and obligations the state incurs in connection with the exercise*  
5 *of a power granted by this section; and]*

6 “[*(C) Amounts due in connection with the investment of proceeds of fi-*  
7 *nancing agreements.]*

8 “[*(b)*] ‘state agency’ has the meaning given that term in ORS 286A.730.

9 **“SECTION 6.** ORS 367.040 is amended to read:

10 “367.040. (1) Notwithstanding ORS 283.087 [(5)] (4), an agency may obtain  
11 an infrastructure loan **the principal amount of which, when combined**  
12 **with the principal amount of financing agreements previously entered**  
13 **into for the same project, is more than \$100,000 for the project.** An  
14 agency may agree to pay the infrastructure loan from any or all of the  
15 available moneys of the agency and may pledge all or any portion of those  
16 moneys to repay the infrastructure loan. An infrastructure loan of an agency  
17 does not constitute a debt of the state or a lending of the credit of the state  
18 within the meaning of any constitutional or statutory limitation.

19 “(2) If an infrastructure loan is made to an agency, the terms of the  
20 infrastructure loan contract bind the State of Oregon and the agency, and  
21 the agency shall unconditionally repay the infrastructure loan from the  
22 moneys the agency has pledged in accordance with the terms of the  
23 infrastructure loan contract.

24 **“SECTION 7. Sections 1 and 2 of this 2013 Act and the amendments**  
25 **to ORS 283.085, 283.087, 283.089 and 367.040 by sections 3 to 6 of this 2013**  
26 **Act apply to financing agreements entered into on or after July 1, 2013.**

27 **“SECTION 8. This 2013 Act being necessary for the immediate**  
28 **preservation of the public peace, health and safety, an emergency is**  
29 **declared to exist, and this 2013 Act takes effect July 1, 2013.”.**

30