

# A-Engrossed Senate Bill 17

Ordered by the Senate April 19  
Including Senate Amendments dated April 19

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of State Treasurer Ted Wheeler)

## 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.

Directs Oregon Investment Council and State Treasurer to try to ensure that moneys in Public Employees Retirement Fund are not invested in companies with interest in Sudan. Applies to investments for which federal law allows divestment by public pension plans.

Directs State Treasurer to adopt engagement policy with private investment fund managers and to encourage managers to end investments with companies with interest in Sudan. Requires notices to fund managers, companies and Oregon Investment Council **about Sudan investment limitations**. Specifies contents of notices.

*[Applies subject to specified fiduciary standards.]*

*[Applies subject to appropriate funding.]*

**Allows extension to Article XI-Q bonds.**

**Eliminates requirement that Oregon Investment Council approve Deferred Compensation Fund investments in mutual funds.**

**Modifies State Treasurer authority concerning security pledges for school district bonds.**

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to state finance; creating new provisions; amending ORS 286A.818, 293.736, 293.812, 328.331  
3 and 328.346; repealing ORS 293.814, 293.815, 293.816 and 293.817; and declaring an emergency.

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

5 **SECTION 1.** ORS 293.812 is amended to read:

6 293.812. As used in ORS 293.811 to 293.817:

7 (1) "Company" means any sole proprietorship, organization, firm, association, corporation, util-  
8 ity, partnership, venture, public franchise, franchisor, franchisee or its wholly owned subsidiary that  
9 exists for profit-making purposes or otherwise to secure economic advantage.

10 [(2) "Doing business" means maintaining equipment, facilities, personnel or any other apparatus  
11 of business or commerce in Sudan, including the ownership or possession of real or personal property  
12 located in Sudan.]

13 [(3) "Investment" or "Invest" means the commitment of funds or other assets to a company, in-  
14 cluding a loan or other extension of credit made to that company, or the ownership or control of a  
15 share or interest in that company or of a bond or other debt instrument issued by that company.]

16 [(4) "Subject investment funds" means:]

17 [(a) The Public Employees Retirement Fund referred to in ORS 238.660;]

18 [(b) The Industrial Accident Fund referred to in ORS 656.632;]

19 [(c) The Common School Fund referred to in ORS 327.405;]

20 [(d) The Oregon War Veterans' Fund referred to in ORS 407.495; and]

**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        *[(e) Investment funds of the State Board of Higher Education available for investment or reinvest-*  
2        *ment by the Oregon Investment Council.]*

3        **(2) “Fund of funds” means investment funds that function by secondary investment in a**  
4        **portfolio of other investments, including investment funds.**

5        **(3) “Index funds” means pooled investments that are passively managed with an intent**  
6        **to match or track the performance of a market index.**

7        **(4)(a) “Invest” means to commit funds or other assets to a company. “Invest” includes**  
8        **making a loan or other extension of credit to a company, or owning or controlling a share**  
9        **or interest in a company or a bond or other debt instrument issued by a company.**

10        **(b) “Investment” means the commitment of funds or other assets to a company for an**  
11        **interest in the company. “Investment” includes the ownership or control of a share or in-**  
12        **terest in a company or of a bond or other debt instrument issued by a company.**

13        **(5) “Scrutinized company” means any company that currently has an investment, in the**  
14        **Sudan, from which federal law specifically allows public pension plans to divest.**

15        *[(5)]* **(6) “Sudan” means the Republic of the Sudan and any territory under the administration,**  
16        **legal or illegal, of Sudan, including but not limited to the Darfur region.**

17        **SECTION 2. Sections 3 to 6 of this 2013 Act are added to and made a part of ORS 293.811**  
18        **to 293.817.**

19        **SECTION 3. (1) The Oregon Investment Council and the State Treasurer, in the State**  
20        **Treasurer’s role as investment officer for the council, shall act reasonably and in a manner**  
21        **consistent with fiduciary standards, including the provisions of ORS 293.721 and 293.726, to**  
22        **try to ensure that managers who are engaged by the council or the State Treasurer for the**  
23        **active management of investment funds consisting of the Public Employees Retirement Fund**  
24        **referred to in ORS 238.660, through the purchase and sale of publicly traded equities, are not**  
25        **investing in publicly traded equities of any scrutinized company.**

26        **(2) Subsection (1) of this section does not apply to investment indirectly made through**  
27        **index funds, fund of funds or privately placed investments.**

28        **SECTION 4. (1) Consistent with fiduciary standards, including the provisions of ORS**  
29        **293.721 and 293.726, the State Treasurer shall adopt a statement of policy that describes a**  
30        **process of engagement with managers who:**

31        **(a) Are engaged by the Oregon Investment Council or the State Treasurer for the active**  
32        **management of investment funds consisting of the Public Employees Retirement Fund re-**  
33        **ferred to in ORS 238.660 through the purchase and sale of publicly traded equities; and**

34        **(b) Have invested such funds in scrutinized companies.**

35        **(2) The policy required under subsection (1) of this section must require the State**  
36        **Treasurer, to the extent practicable, to identify and send a written notice to the managers**  
37        **described in subsection (1) of this section. The notice shall encourage the managers, con-**  
38        **sistent with fiduciary standards, including the provisions of ORS 293.721 and 293.726, to:**

39        **(a) Notify scrutinized companies with which the managers have made investments of the**  
40        **State Treasurer’s policy adopted pursuant to subsection (1) of this section; and**

41        **(b) Not later than 90 days after giving the notice, end investments in the scrutinized**  
42        **companies and avoid future investments in the scrutinized companies, as long as the man-**  
43        **agers may do so without monetary loss through reasonable, prudent and productive invest-**  
44        **ments in companies generating returns that are comparable to the returns generated by the**  
45        **scrutinized companies.**

1       (3) A notice provided by a manager to a scrutinized company under subsection (2) of this  
2 section shall advise the scrutinized company that the company may comment in writing to  
3 the State Treasurer to dispute the identification of the company as a scrutinized company.

4       (4) If the State Treasurer determines under subsection (3) of this section that a company  
5 is not a scrutinized company, the State Treasurer shall notify the relevant manager of the  
6 State Treasurer's determination.

7       (5) The State Treasurer shall advise the Oregon Investment Council of a notice the State  
8 Treasurer provides under subsection (2) of this section if the manager to whom the notice  
9 was given has not informed the State Treasurer within 180 days after the date the notice  
10 was given that the manager has ended the manager's investment in scrutinized companies  
11 or plans to divest from its investment in scrutinized companies.

12       **SECTION 5.** On or before March 15 of each year, the State Treasurer shall make avail-  
13 able on the State Treasurer's website a summary of actions taken during the previous year  
14 in accordance with ORS 293.811 to 293.817. The summary shall include a list of identified  
15 scrutinized companies.

16       **SECTION 6.** Sections 4 (2) to (5) and 5 of this 2013 Act apply only if the Legislative As-  
17 sembly appropriates sufficient moneys to the State Treasurer, other than moneys described  
18 by ORS 293.718 or moneys in the Public Employees' Retirement Fund, to administer sections  
19 4 (2) to (5) and 5 of this 2013 Act.

20       **SECTION 7.** ORS 286A.818 is amended to read:

21       286A.818. (1) In accordance with the applicable provisions of this chapter, the State Treasurer,  
22 at the request of the Director of the Oregon Department of Administrative Services, may issue Ar-  
23 ticle XI-Q bonds:

24       (a) For any of the purposes specified in Article XI-Q of the Oregon Constitution, plus an amount  
25 determined by the State Treasurer to pay estimated bond-related costs; and

26       (b) Subject to the budget authorization for Article XI-Q bond issuance established under ORS  
27 286A.035 for the biennium.

28       (2) The State Treasurer may issue Article XI-Q bonds for the purpose of:

29       (a) Refunding Article XI-Q bonds.

30       (b) Subject to subsection (3) of this section, refinancing borrowings issued before December 2,  
31 2010, to finance or refinance costs described in [*section 1 (1),*] Article XI-Q, **section 1 (1)**, of the  
32 Oregon Constitution.

33       (c) Paying bond-related costs.

34       (3) When Article XI-Q bonds are issued to refinance borrowings issued before December 2, 2010,  
35 **and an extension of the maturity date is necessary or desirable to establish a uniform re-**  
36 **payment schedule for Article XI-Q bonds**, the maturity date of the Article XI-Q bonds may [*not*  
37 *be later than*] **be extended up to six months beyond** the maturity date of the refinanced bor-  
38 rowings.

39       (4) The State Treasurer shall deposit the net proceeds of Article XI-Q bonds issued in one or  
40 more project funds established in the State Treasury or with a third party approved by the State  
41 Treasurer. Net proceeds must be expended in accordance with procedures established by the Oregon  
42 Department of Administrative Services for the purposes described in each project agency's budget  
43 authorization.

44       (5) If at any time the Oregon Department of Administrative Services and the project agency  
45 determine that the net proceeds of Article XI-Q bonds deposited in a project fund pursuant to sub-

1 section (4) of this section exceed the amount necessary for the purpose described in the project  
 2 agency's budget authorization, the department may allocate and transfer the excess amount as de-  
 3 termined by the department to other project funds, the Article XI-Q Bond Fund established under  
 4 ORS 286A.820 or the Article XI-Q Bond Administration Fund established under ORS 286A.822.

5 (6) Article XI-Q bonds are a general obligation of the State of Oregon and must contain a direct  
 6 promise on behalf of the State of Oregon to pay the principal of, the interest on and the premium,  
 7 if any, on the Article XI-Q bonds. The State of Oregon shall pledge its full faith and credit and  
 8 taxing power to the payment of the principal of, the interest on and the premium, if any, on Article  
 9 XI-Q bonds, except that the ad valorem taxing power of the State of Oregon may not be pledged to  
 10 pay Article XI-Q bonds.

11 **SECTION 8. The State Treasurer shall first make available on the State Treasurer's**  
 12 **website the information required under section 5 of this 2013 Act not later than March 15,**  
 13 **2014.**

14 **SECTION 9. Sections 3 to 5 of this 2013 Act and the amendments to ORS 293.812 by sec-**  
 15 **tion 1 of this 2013 Act apply to investments made prior to, on or after the effective date of**  
 16 **this 2013 Act.**

17 **SECTION 10.** ORS 293.736 is amended to read:

18 293.736. (1) Except as provided in ORS 293.741, in amounts available for investment purposes  
 19 and subject to the policies formulated by the Oregon Investment Council, the investment officer  
 20 shall invest and reinvest moneys in the investment funds and acquire, retain, manage, including ex-  
 21 ercise of any voting rights, and dispose of investments of the investment funds.

22 (2) Subject to the direction of the council, the investment officer shall perform the functions  
 23 described in subsection (1) of this section with respect to the investment in mutual funds of moneys  
 24 in the Deferred Compensation Fund. [*The council must approve all mutual funds in which Deferred*  
 25 *Compensation Fund moneys are invested.*]

26 **SECTION 11.** ORS 328.331 is amended to read:

27 328.331. (1) Any school district may request that the State Treasurer issue a certificate evi-  
 28 dencing qualification of its school bonds for the state guaranty.

29 (2) The State Treasurer may, in accordance with ORS chapter 183, adopt and enforce rules that  
 30 prescribe procedures for school district applications to qualify for the certificate of qualification and  
 31 state guaranty and rules that prescribe the **conditions and** standards a school district must meet  
 32 to qualify and to maintain qualification. The State Treasurer, by rule, may establish, but shall not  
 33 be limited to:

34 (a) A requirement that a school district pay a processing fee, sufficient to defray the State  
 35 Treasurer's costs in processing and verifying applications, for each application and each application  
 36 for annual renewal of a certificate of qualification.

37 (b) Deadlines or application periods in which school districts must submit applications.

38 (c) The character, quality and currency of the information on the financial affairs and condition  
 39 of a school district that must be submitted for a school district's application to be considered.

40 (d) The form and character of any certifications or affidavits required of officials of the applying  
 41 school districts concerning the accuracy and completeness of the information provided in conjunc-  
 42 tion with the district's application.

43 (e) Any other matters necessary to making reliable assessments of the fiscal and financial affairs  
 44 and condition of applying school districts.

45 **(f) Requirements related to additional conditions the school district must meet, which**

1 **may include requiring a pledge of school district revenues or the grant of a security in other**  
2 **assets of the school district, to assure the State Treasurer that the school district will be**  
3 **able to fully reimburse the state for amounts transferred by the State Treasurer and any**  
4 **interest or penalties applicable to the transferred amounts.**

5 [(f)] (g) The manner of designating the particular school bonds to which the State Treasurer's  
6 certificate of qualification and the state guaranty applies.

7 [(g)] (h) Subject to Article XI-K of the Oregon Constitution, reasonable limitations on:

8 (A) The total aggregate outstanding amount of all school bonds the state may guarantee; and

9 (B) The outstanding amount of the school bonds of any single school district the state may  
10 guarantee.

11 [(h)] (i) The method of providing notice of denial of a certificate of qualification.

12 [(i)] (j) The method of providing notice of disqualification to school districts that fail to qualify  
13 or for which changes in financial affairs or condition or failure to provide the State Treasurer cur-  
14 rent or updated information warrant disqualification of the school district.

15 [(j)] (k) Requirements for promptly reporting to the State Treasurer any changes in condition  
16 or occurrences that may affect a school district's eligibility to qualify or maintain its qualification  
17 to participate in the state guaranty program.

18 (3)(a) After reviewing the request, if the State Treasurer determines that the school district is  
19 eligible, the State Treasurer shall promptly issue the certificate of qualification and provide it to the  
20 requesting school district.

21 (b)(A) Unless the certificate of qualification is revoked by the State Treasurer, and subject to  
22 the fulfillment of any conditions or requirements imposed by the State Treasurer, the school district  
23 receiving the certificate and all other persons may rely on the certificate as evidencing eligibility  
24 for the state guaranty for one year from and after the date of the certificate.

25 (B) [No] A revocation of a certificate of qualification [shall] **does not** affect the state guaranty  
26 of any outstanding school bonds previously issued under a valid certificate.

27 (4) Any qualified school district that chooses to forgo the benefits of the state guaranty for a  
28 particular issue of school bonds may do so by not referring to ORS 328.321 to 328.356 on the face  
29 of its school bonds.

30 (5) [No] A school district that has school bonds, the principal of or interest on which has been  
31 paid in whole or in part by the state under ORS 328.341, [may be] **is not** eligible to issue any addi-  
32 tional school bonds with the state guaranty until:

33 (a) All payment obligations of the school district to the state under ORS 328.346 are satisfied;  
34 and

35 (b) The State Treasurer certifies in a writing, to be kept on file by the State Treasurer, that the  
36 school district is fiscally solvent.

37 **SECTION 12.** ORS 328.346 is amended to read:

38 328.346. (1)(a) If one or more payments on school bonds are made by the State Treasurer as  
39 provided in ORS 328.341, the State Treasurer shall pursue recovery from the school district of all  
40 moneys necessary to reimburse the state for all amounts paid by the treasurer to the paying agent,  
41 as well as interest, penalties and any additional costs incurred by the treasurer as described in this  
42 section. In seeking recovery, the State Treasurer may:

43 (A) Intercept any payments from the General Fund, the State School Fund, the income of the  
44 Common School Fund and any other source of operating moneys provided by or through the state  
45 to the school district that issued the school bonds that would otherwise be paid to the school district

1 by the state; *[and]*

2 **(B) Exercise the rights of a secured creditor in any moneys or assets pledged by the**  
3 **school district to secure the district's reimbursement obligation to the state; and**

4 *[(B)]* (C) Apply any intercepted payments **and pledged moneys or assets** to reimburse the state  
5 for payments made pursuant to the state guaranty until all obligations of the school district to the  
6 state arising from those payments, including interest and penalties, and any additional costs in-  
7 curred by the treasurer as described in this section are paid in full.

8 (b) The state has no obligation to the school district or to any person or entity to replace any  
9 moneys **or assets** intercepted **or pledged** under authority of this section.

10 (c) The authority of the State Treasurer to intercept payments **and the lien in any pledged**  
11 **moneys** under this subsection *[has]* **have** priority over all claims against money provided by the  
12 state to a school district, including a claim that is based on a funds diversion agreement under ORS  
13 238.698. A funds diversion agreement under ORS 238.698 has priority over all other claims against  
14 money provided by the state to a school district.

15 (2) The school district that issued school bonds for which the state has made all or part of a  
16 debt service payment shall:

17 (a) Reimburse all moneys drawn or paid by the State Treasurer on its behalf;

18 (b) Pay interest to the state on all moneys paid by the state from the date the moneys were  
19 drawn to the date they are repaid at a rate to be determined by the State Treasurer, in the State  
20 Treasurer's discretion, to be sufficient to cover the costs of funds to the state plus the costs of ad-  
21 ministration of the state guaranty obligation and of collection of reimbursement; and

22 (c) Pay any applicable penalties as described in subsection (3) of this section.

23 (3)(a) The State Treasurer shall establish the reimbursement interest rate after considering the  
24 circumstances of any prior draws by the school district on the state, market interest and penalty  
25 rates and the cost of funds, if any, that were required to be used or borrowed by the state to make  
26 payment on the school bonds. The State Treasurer shall have authority to establish, by negotiations  
27 with the school district or otherwise, any plan of reimbursement by the school district that will re-  
28 sult in full and complete reimbursement to the state. Subject to the requirement for full and com-  
29 plete reimbursement, the State Treasurer may consider incorporating into the reimbursement plan  
30 the means and methods to allow the school district to continue its operations during the time the  
31 reimbursement plan is in effect.

32 (b) The State Treasurer may, after considering the circumstances giving rise to the failure of  
33 the school district to make payment on its school bonds in a timely manner, impose on the school  
34 district a penalty of not more than five percent of the amount paid by the state pursuant to the state  
35 guaranty for each instance in which a payment by the state is made.

36 (4)(a) If the State Treasurer determines that amounts obtained under this section will not reim-  
37 burse the state in full within the time determined by the State Treasurer or incorporated in the  
38 reimbursement plan from the state's payment of a school district's debt service payment, the State  
39 Treasurer shall pursue any legal action, including but not limited to mandamus, against the school  
40 district or school district board to compel the school district to:

41 (A) Levy and provide property tax revenues to pay debt service on its school bonds and other  
42 obligations when due; and

43 (B) Meet its repayment obligations to the state.

44 (b) With respect to any school bonds for which the State Treasurer has made payment under the  
45 state guaranty, and in addition to any other rights or remedies available at law or in equity, the

1 state shall have the same substantive and procedural rights as would a holder of the school bonds  
2 of a school district.

3 (c) The Attorney General shall assist the State Treasurer in the discharge of the duties under  
4 this section.

5 (d) The school district shall pay the attorney fees, expenses and costs of the State Treasurer and  
6 the Attorney General.

7 (5)(a) Except as provided in paragraph (c) of this subsection, any school district whose funds  
8 were intercepted **or otherwise paid to the State Treasurer** under this section may replace those  
9 funds from other school district moneys or from ad valorem property taxes, subject to the limitations  
10 provided in this subsection.

11 (b) A school district may use ad valorem property taxes or other moneys to replace intercepted  
12 funds **or other funds paid to the State Treasurer** only if the ad valorem property taxes or other  
13 moneys were derived from:

14 (A) Taxes originally levied to make the payment, but which were not timely received by the  
15 school district;

16 (B) Taxes from a special levy imposed to make up the missed payment or to replace the inter-  
17 cepted [moneys] **funds or funds otherwise paid to the State Treasurer;**

18 (C) Moneys transferred from any lawfully available funds of the school district or the undis-  
19 tributed reserves, if any, of the school district; or

20 (D) Any other source of moneys on hand and legally available.

21 (c) Notwithstanding paragraphs (a) and (b) of this subsection, a school district may not replace  
22 operating funds intercepted by the state **or otherwise paid to the State Treasurer** with moneys  
23 collected and held to make payments on school bonds if that replacement would divert moneys from  
24 the payment of future debt service on the school bonds and increase the risk that the state guaranty  
25 would be called upon a second time.

26 **SECTION 13. Section 14 of this 2013 Act is added to and made a part of ORS 328.321 to**  
27 **328.356.**

28 **SECTION 14. (1) Except for moneys subject to the intercept provided in ORS 328.346**  
29 **(1)(a), a school district may pledge as security for its obligation to reimburse the state under**  
30 **ORS 328.346 (2) any:**

31 **(a) Revenues received or held by the school district; or**

32 **(b) Real or personal property held by the school district.**

33 **(2) The lien of any pledge, mortgage or security interest granted by a school district**  
34 **under this section is valid and binding from the time the pledge is granted. The revenue or**  
35 **property is immediately subject to the lien without physical delivery, filing or other act, and**  
36 **the lien is superior to all other claims and liens of any kind whatsoever.**

37 **(3) The lien may be foreclosed by a proceeding brought in the circuit courts of the state**  
38 **and any tangible real or personal property subject to the lien may be sold upon an order of**  
39 **the court. The proceeds of the sale must be applied first to the payment of the costs of**  
40 **foreclosure and then to the amounts owing under ORS 328.346 (2), with any remaining bal-**  
41 **ance paid to the school district.**

42 **SECTION 15. ORS 293.814, 293.815, 293.816 and 293.817 are repealed.**

43 **SECTION 16. This 2013 Act being necessary for the immediate preservation of the public**  
44 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
45 **on its passage.**

