

SENATE AMENDMENTS TO SENATE BILL 17

By COMMITTEE ON FINANCE AND REVENUE

April 19

1 On page 1 of the printed bill, line 2, delete “293.812” and insert “286A.818, 293.736, 293.812,
2 328.331 and 328.346”.

3 On page 3, delete lines 11 through 14 and insert:

4 “**SECTION 6. Sections 4 (2) to (5) and 5 of this 2013 Act apply only if the Legislative As-**
5 **sembly appropriates sufficient moneys to the State Treasurer, other than moneys described**
6 **by ORS 293.718 or moneys in the Public Employees’ Retirement Fund, to administer sections**
7 **4 (2) to (5) and 5 of this 2013 Act.**

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

9 “286A.818. (1) In accordance with the applicable provisions of this chapter, the State Treasurer,
10 at the request of the Director of the Oregon Department of Administrative Services, may issue Ar-
11 ticle XI-Q bonds:

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

14 “(b) Subject to the budget authorization for Article XI-Q bond issuance established under ORS
15 286A.035 for the biennium.

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

17 “(a) Refunding Article XI-Q bonds.

18 “(b) Subject to subsection (3) of this section, refinancing borrowings issued before December 2,
19 2010, to finance or refinance costs described in [*section 1 (1),*] Article XI-Q, **section 1 (1)**, of the
20 Oregon Constitution.

21 “(c) Paying bond-related costs.

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

27 “(4) The State Treasurer shall deposit the net proceeds of Article XI-Q bonds issued in one or
28 more project funds established in the State Treasury or with a third party approved by the State
29 Treasurer. Net proceeds must be expended in accordance with procedures established by the Oregon
30 Department of Administrative Services for the purposes described in each project agency’s budget
31 authorization.

32 “(5) If at any time the Oregon Department of Administrative Services and the project agency
33 determine that the net proceeds of Article XI-Q bonds deposited in a project fund pursuant to sub-
34 section (4) of this section exceed the amount necessary for the purpose described in the project
35 agency’s budget authorization, the department may allocate and transfer the excess amount as de-

1 terminated by the department to other project funds, the Article XI-Q Bond Fund established under
2 ORS 286A.820 or the Article XI-Q Bond Administration Fund established under ORS 286A.822.

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

9 In line 15, delete “7” and insert “8”.

10 In line 18, delete “8” and insert “9”.

11 After line 20, insert:

12 “**SECTION 10.** ORS 293.736 is amended to read:

13 “293.736. (1) Except as provided in ORS 293.741, in amounts available for investment purposes
14 and subject to the policies formulated by the Oregon Investment Council, the investment officer
15 shall invest and reinvest moneys in the investment funds and acquire, retain, manage, including ex-
16 ercise of any voting rights, and dispose of investments of the investment funds.

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

21 “**SECTION 11.** ORS 328.331 is amended to read:

22 “328.331. (1) Any school district may request that the State Treasurer issue a certificate evi-
23 dencing qualification of its school bonds for the state guaranty.

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

29 “(a) A requirement that a school district pay a processing fee, sufficient to defray the State
30 Treasurer’s costs in processing and verifying applications, for each application and each application
31 for annual renewal of a certificate of qualification.

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

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

35 “(d) The form and character of any certifications or affidavits required of officials of the apply-
36 ing school districts concerning the accuracy and completeness of the information provided in con-
37 junction with the district’s application.

38 “(e) Any other matters necessary to making reliable assessments of the fiscal and financial af-
39 fairs and condition of applying school districts.

40 “**(f) Requirements related to additional conditions the school district must meet, which**
41 **may include requiring a pledge of school district revenues or the grant of a security in other**
42 **assets of the school district, to assure the State Treasurer that the school district will be**
43 **able to fully reimburse the state for amounts transferred by the State Treasurer and any**
44 **interest or penalties applicable to the transferred amounts.**

45 “[*f*] **(g)** The manner of designating the particular school bonds to which the State Treasurer’s

1 certificate of qualification and the state guaranty applies.

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

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

4 “(B) The outstanding amount of the school bonds of any single school district the state may
5 guarantee.

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

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

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

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

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

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

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

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

28 “(a) All payment obligations of the school district to the state under ORS 328.346 are satisfied;
29 and

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

32 “**SECTION 12.** ORS 328.346 is amended to read:

33 “328.346. (1)(a) If one or more payments on school bonds are made by the State Treasurer as
34 provided in ORS 328.341, the State Treasurer shall pursue recovery from the school district of all
35 moneys necessary to reimburse the state for all amounts paid by the treasurer to the paying agent,
36 as well as interest, penalties and any additional costs incurred by the treasurer as described in this
37 section. In seeking recovery, the State Treasurer may:

38 “(A) Intercept any payments from the General Fund, the State School Fund, the income of the
39 Common School Fund and any other source of operating moneys provided by or through the state
40 to the school district that issued the school bonds that would otherwise be paid to the school district
41 by the state; [and]

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

44 “[B)] (C) Apply any intercepted payments **and pledged moneys or assets** to reimburse the
45 state for payments made pursuant to the state guaranty until all obligations of the school district

1 to the state arising from those payments, including interest and penalties, and any additional costs
2 incurred by the treasurer as described in this section are paid in full.

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

5 “(c) The authority of the State Treasurer to intercept payments **and the lien in any pledged**
6 **moneys** under this subsection [*has*] **have** priority over all claims against money provided by the
7 state to a school district, including a claim that is based on a funds diversion agreement under ORS
8 238.698. A funds diversion agreement under ORS 238.698 has priority over all other claims against
9 money provided by the state to a school district.

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

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

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

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

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

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

31 “(4)(a) If the State Treasurer determines that amounts obtained under this section will not re-
32 imburse the state in full within the time determined by the State Treasurer or incorporated in the
33 reimbursement plan from the state’s payment of a school district’s debt service payment, the State
34 Treasurer shall pursue any legal action, including but not limited to mandamus, against the school
35 district or school district board to compel the school district to:

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

38 “(B) Meet its repayment obligations to the state.

39 “(b) With respect to any school bonds for which the State Treasurer has made payment under
40 the state guaranty, and in addition to any other rights or remedies available at law or in equity, the
41 state shall have the same substantive and procedural rights as would a holder of the school bonds
42 of a school district.

43 “(c) The Attorney General shall assist the State Treasurer in the discharge of the duties under
44 this section.

45 “(d) The school district shall pay the attorney fees, expenses and costs of the State Treasurer

1 and the Attorney General.

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

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

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

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

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

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

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

21 **“SECTION 13. Section 14 of this 2013 Act is added to and made a part of ORS 328.321 to**
22 **328.356.**

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

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

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

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

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

37 In line 21, delete “9” and insert “15”.

38 In line 22, delete “10” and insert “16”.