

Enrolled Senate Bill 265

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CHAPTER

AN ACT

Relating to higher education revenue bonds; creating new provisions; and amending ORS 286A.035 and 351.476.

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

SECTION 1. ORS 286A.035 is amended to read:

286A.035. (1) Each related agency shall report the plans of the related agency for the issuance of bonds during the next biennium. The related agency shall submit the related agency's report to the Governor by a date determined by the Governor and shall include in the report a description of bonds that the related agency intends to retire or defease during the next biennium.

(2) On or before a date determined by the Governor, the State Treasurer shall advise the Governor on the prudent maximum amount of bonds to be issued for each bond program. The State Treasurer shall consider available economic and financial data in preparing advice to be given to the Governor.

(3) As part of the Governor's budget report described in ORS 291.216, the Governor shall:

(a) Consider the prudent maximum amounts advised by the State Treasurer pursuant to subsection (2) of this section to determine the Governor's total recommended amount; and

(b) Recommend to the Legislative Assembly the total amount of bonds the State Treasurer may issue for each bond program for a biennium.

(4) **Except as otherwise provided in ORS 351.476**, the Legislative Assembly shall determine the amount of bonds the State Treasurer may issue for each state agency for a biennium. If the Legislative Assembly fails to make the determination described in this subsection by the first day of the biennium, the unused portion of the authorization the Legislative Assembly made for the preceding biennium is deemed to carry forward for the current biennium at the amount authorized for the preceding biennium until the earlier of:

(a) The date on which legislation authorizing the amount of bonds for the current biennium is enacted; or

(b) The date on which the Legislative Assembly adjourns sine die.

(5) **Except as otherwise provided in ORS 351.476**, the amount of bonds that may be issued under bond programs may be modified by the Governor. However, the Governor may not modify the amount of bonds that may be issued under bond programs in a way that would cause the maximum amount established by the Legislative Assembly for a category of bond programs to be exceeded if the Legislative Assembly:

(a) Has categorized the bonds that may be issued under bond programs as general obligation, direct revenue and pass-through revenue bonds; and

(b) Assigned a maximum amount to each category.

(6) This section applies to bonds:

(a) Unless the bonds are expressly exempted from the requirements of this section.

(b) Except refunding bonds.

SECTION 2. ORS 351.476 is amended to read:

351.476. (1) In addition to and not in lieu of bonds authorized pursuant to ORS 286A.035, at the request of the Chancellor of the Oregon University System, the State Treasurer may issue, as provided in ORS chapter 286A, higher education revenue bonds [*from time to time*], the net proceeds of which must be used to:

(a) Finance projects that the State Board of Higher Education determines will assist the Oregon University System in carrying out its statutory powers;

(b) Refund bonds issued for the projects; and

(c) Pay bond-related costs.

(2)(a) Before pledging all or a portion of higher education revenues, pursuant to ORS 286A.102, to secure higher education revenue bonds, higher education credit enhancement devices or agreements for exchange of interest rates related to such revenue bonds or credit enhancement devices, the chancellor shall reserve sufficient funds each biennium to satisfy any payment or reserve requirements relating to:

(A) General obligation bonds or certificates of participation issued for the benefit of the Oregon University System;

(B) Credit enhancement devices or agreements for exchange of interest rates entered into in connection with obligations related to general obligation bonds or certificates of participation issued for the benefit of the Oregon University System; and

(C) Loans to the Oregon University System funded by state general obligation bonds.

(b) Pursuant to ORS 286A.010, the Oregon University System shall provide cash flow projections and other information requested by the State Treasurer to determine the sufficiency of higher education revenues to satisfy the requirements of paragraph (a) of this subsection and any proposed revenue bonds.

(c) For purposes of the issuance of bonds and ORS chapter 286A, the Oregon University System shall be considered a related agency as defined in ORS 286A.001 (9).

(d) The chancellor shall identify the specific higher education revenues that will be pledged to secure each series of higher education revenue bonds and specify the status of the lien of each pledge.

(3) The chancellor may enter into covenants, pursuant to ORS 286A.025 (4)(c), on behalf of the State of Oregon for the benefit of holders of higher education revenue bonds, providers of credit enhancement for higher education revenue bonds and counterparties to agreements for exchange of interest rates to:

(a) Adjust the rates, charges or fees that produce higher education revenues so that higher education revenues equal or exceed specified levels during specified periods.

(b) Create only those pledges or liens on higher education revenues that are permitted by the covenants authorized by this section.

(c) Budget and apply higher education revenues, or otherwise allow higher education revenues to be applied, in amounts that, when added to other moneys lawfully available for the purpose, will be sufficient:

(A) To pay in full and when due the principal, interest and premium on outstanding higher education revenue bonds;

(B) To pay amounts due in connection with agreements for exchange of interest rates and credit enhancement devices for higher education revenue bonds; and

(C) To maintain the balance required by covenants in any debt service reserves established for the higher education revenue bonds.

(4) The chancellor shall operate the properties of the Oregon University System in compliance with the higher education revenue bond covenants until all higher education revenue bonds are paid or defeased.

(5) Higher education revenue bonds are not a general obligation of the State of Oregon, and neither the full faith and credit nor the taxing power of the State of Oregon may be pledged to secure or pay the higher education revenue bonds.

(6) The State Treasurer and the Oregon University System do not have an obligation to pay bond-related costs except as provided in ORS 351.473 to 351.485. A holder of higher education revenue bonds issued under this section does not have the right to compel the exercise of the taxing power of the State of Oregon to pay bond-related costs.

(7) As long as any higher education revenue bonds issued under this section are outstanding, covenants related to the higher education revenue bonds are deemed to be contracts between the State of Oregon and holders of the higher education revenue bonds. The State of Oregon may not give force or effect to a statute or initiative or referendum measure approved by the electors of this state if doing so would unconstitutionally impair existing covenants made with the holders of existing higher education revenue bonds or would unconstitutionally impair other obligations or agreements regarding the security of higher education revenue bonds to which the moneys deposited in the accounts established by ORS 351.479, 351.482 and 351.485 are pledged and assigned.

(8) The principal, interest and any premium and any issuance costs on a financing agreement under ORS 283.085 to 283.092, any general obligation bond, any revenue bond and any related credit enhancement device or interest rate exchange agreement shall be paid from the sources specified in the laws and documents authorizing the financing agreement, bond, credit enhancement device or interest rate exchange agreement. The Oregon University System shall pay any other expenses and liabilities, including but not limited to legal expenses, costs of settling claims, judgments, federal arbitrage rebates and penalties and expenses arising from an inquiry, audit or other action by a federal or state regulatory body, unless the expense or liability results solely from the negligence or willful misconduct of a state agency.

(9) Pursuant to ORS chapter 180, on behalf of the State Treasurer or any other state agency, the Attorney General shall appear, commence, prosecute or defend any action, suit, matter, cause or proceeding arising from any financing agreement under ORS 283.085 to 283.092, any bond issued for the benefit of the Oregon University System and any related credit enhancement device or interest rate exchange agreement.

SECTION 3. The amendments to ORS 286A.035 and 351.476 by sections 1 and 2 of this 2013 Act apply to bonds issued in or after the biennium beginning July 1, 2013.

Passed by Senate July 6, 2013

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House July 7, 2013

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2013

Approved:

.....M,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

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Kate Brown, Secretary of State