

A-Engrossed
Senate Bill 266

Ordered by the Senate April 11
Including Senate Amendments dated April 11

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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.

Creates individualized process for Oregon University System to enter into financing agreements.
Declares emergency, effective July 1, 2013.

A BILL FOR AN ACT

1
2 Relating to financing agreements; creating new provisions; amending ORS 283.085, 283.087, 283.089,
3 286A.001 and 367.040; and declaring an emergency.

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

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

6 (a) **“Available funds” means funds appropriated or otherwise made available by the Leg-**
7 **islative Assembly, or other lawfully available funds, to pay amounts due under a financing**
8 **agreement for the fiscal period in which the payments are due, unexpended proceeds of the**
9 **financing agreement and reserves or other amounts that have been deposited in trust to pay**
10 **amounts due under the financing agreement.**

11 (b) **“Financing agreement” means a lease purchase agreement, an installment sale**
12 **agreement, a loan agreement or any other agreement:**

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

15 (B) **To finance infrastructure, including but not limited to telecommunications systems,**
16 **systems for water, sewage, electricity, steam or natural gas and other equipment or im-**
17 **provements that are necessary or appropriate to support a facility that is, or will be, owned**
18 **or operated by the Oregon University System; or**

19 (C) **To refinance financing agreements previously executed pursuant to this section or**
20 **under ORS 283.085 to 283.092 for the benefit of the Oregon University System.**

21 (2) **The Chancellor of the Oregon University System may enter into financing agreements**
22 **on terms the chancellor finds to be advantageous to the Oregon University System if the**
23 **debt service, when combined with existing debt service that is paid from revenues of the**
24 **Oregon University System, does not exceed the maximum allowed by State Board of Higher**
25 **Education policy.**

26 (3) **A financing agreement entered into by the Oregon University System pursuant to this**
27 **section is subject to the following requirements:**

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 (a) The Oregon University System may not pay amounts due under a financing agree-
2 ment from any source other than available funds. If available funds are not sufficient to pay
3 amounts due under a financing agreement, the lender may exercise property rights granted
4 by the Oregon University System in the financing agreement against the property that was
5 purchased with proceeds of the financing agreement and may apply the amounts received to
6 payments scheduled to be made under the financing agreement.

7 (b) The Oregon University System may not grant property rights in property unless the
8 property is being acquired, substantially improved or refinanced with proceeds of a financing
9 agreement or the property is land on which financed improvements are located.

10 (c) The State Treasurer shall review and approve, pursuant to rules adopted by the State
11 Treasurer, the terms and conditions of financing agreements to be entered into by the
12 Oregon University System.

13 (d) A financing agreement is not an obligation of any agency of the State of Oregon,
14 other than the Oregon University System.

15 (4) Financing agreements entered into by the Oregon University System under this sec-
16 tion are in addition to and not in lieu of financing agreements entered into by the Oregon
17 Department of Administrative Services for the benefit of the Oregon University System un-
18 der ORS 283.085 to 283.092.

19 **SECTION 2.** ORS 283.087 is amended to read:

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

25 (2) Financing agreements *[shall be]* **are** subject to the following limitations:

26 [(1)] (a) *[Amounts payable by the state under a financing agreement shall be limited to available*
27 *funds. In no circumstance shall the state be obligated to]* **Neither the director, the State Treasurer**
28 **nor any other agency of the state may** pay amounts due under a financing agreement from any
29 source other than available funds. If there are insufficient available funds to pay amounts due under
30 a financing agreement, the lender may exercise any property rights which the state has granted to
31 it in the financing agreement, against the property which was purchased with the proceeds of the
32 financing agreement, and apply the amounts so received toward payments scheduled to be made by
33 the state under the financing agreement.

34 [(2)] *No property rights may be granted in property unless the property is being acquired, substan-*
35 *tially improved or refinanced with the proceeds of a financing agreement, or is land on which such*
36 *property is located.]*

37 [(3)] *The principal amount of]*

38 (b) **Neither the director, the State Treasurer nor any other agency of the state may grant**
39 **property rights in property unless the property is being acquired, substantially improved or**
40 **refinanced with proceeds of a financing agreement or the property is land on which financed**
41 **improvements are located.**

42 (c) Financing agreements entered into by the state pursuant to ORS 283.085 to 283.092 *[shall*
43 *be treated as an amount of bonds and is]* **are** subject to ORS 286A.035.

44 [(4)] (3) The limitations of subsection [(3)] (2)(c) of this section *[shall]* **do** not apply to financing
45 agreements *[which are]* used to refinance previously executed financing agreements. The expenditure

1 of funds used to finance previously executed financing agreements *[and]* **or to** pay the costs incurred
 2 to issue the new financing agreements *[shall]* **must** be recorded using administrative budget limita-
 3 tions.

4 *[(5)]* **(4)** The state or any state agency *[shall]* **may** not enter into financing agreements under
 5 any provision of law other than ORS 283.085 to 283.092 if the principal amount of the financing
 6 agreement¹*[, together with]* **and** the principal amount of any financing agreement previously issued
 7 by the state or a state agency for the same project²*[,]* exceeds \$100,000.

8 *[(6)]* **(5)** Upon the request and with the approval of the Chief Justice of the Supreme Court or
 9 the State Court Administrator, the Director of the Oregon Department of Administrative Services
 10 may enter into financing agreements in accordance with ORS 283.085 to 283.092, on behalf of the
 11 Judicial Department.

12 **SECTION 3.** ORS 283.085 is amended to read:

13 283.085. As used in ORS 283.085 to 283.092:

14 (1) “Available funds” means funds appropriated or otherwise made available by the Legislative
 15 Assembly to pay amounts due under a financing agreement for the fiscal period in which the pay-
 16 ments are due, *[together with any]* unexpended proceeds of the financing agreement¹*[, and any]* **and**
 17 reserves or other amounts *[which]* **that** have been deposited in trust to pay amounts due under the
 18 financing agreement.

19 (2) “Credit enhancement agreement” means any agreement or contractual relationship between
 20 the state and any bank, trust company, insurance company, surety bonding company, pension fund
 21 or other financial institution providing additional credit on or security for a financing agreement
 22 or certificates of participation authorized by ORS 283.085 to 283.092.

23 *[(3)]* “Director” means the Director of the Oregon Department of Administrative Services.]

24 *[(4)(a)]* **(3)** “Financing agreement” means a lease purchase agreement, an installment sale
 25 agreement, a loan agreement or any other agreement:

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

28 *[(B)]* **(b)** To finance infrastructure, **including but not limited to telecommunications sys-**
 29 **tems, systems for water, sewage, electricity, steam or natural gas and other equipment or**
 30 **improvements that are necessary or appropriate to support** *[related to]* a facility that is, **or**
 31 **will be**, owned *[and]* **or** operated by the state;

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

37 *[(D)]* **(d)** To finance all or a portion of the state’s pension liabilities for retirement, health care
 38 or disability benefits, in an amount that produces net proceeds that do not exceed the State
 39 Treasurer’s estimate of those liabilities based on information provided to the State Treasurer by the
 40 Public Employees Retirement System; or

41 *[(E)]* **(e)** To refinance previously executed financing agreements.

42 *[(b) As used in this subsection, “infrastructure” includes, but is not limited to, sewer and water*
 43 *systems and road improvements.]*

44 **(4) “Financing costs” means costs or expenses that the Director of the Oregon Depart-**
 45 **ment of Administrative Services or the State Treasurer determines are necessary or desir-**

1 **able in connection with entering into financing agreements and maintaining the certificate**
2 **of participation program, including but not limited to payment of:**

3 (a) **Amounts due under financing agreements;**

4 (b) **Costs and obligations the director, the State Treasurer or any other agency of the**
5 **state incurs in connection with the exercise of a power granted by ORS 283.085 to 283.092;**
6 **and**

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

8 (5) "Personal property" means tangible personal property, software and fixtures.

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

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

14 (8) "Treasurer" means the State Treasurer.

15 **SECTION 4.** ORS 283.089 is amended to read:

16 283.089. (1) With the approval of the State Treasurer, the Director of the Oregon Department
17 of Administrative Services may:

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

25 (b) Enter into credit enhancement agreements for financing agreements or certificates of par-
26 ticipation, provided that [*such*] **amounts due under** credit enhancement agreements [*shall be*] **are**
27 payable solely from available funds and amounts received from the exercise of property rights
28 granted under [*such*] **the** financing agreements.

29 (c) Use the gross proceeds of financing agreements for the purposes described in ORS 283.085
30 [(4)] **(3)** and to pay the costs of reserves, credit enhancements and other costs associated with issu-
31 ing, administering and maintaining the financing.

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

33 (e) Subject to ORS 283.087 (2)(b), grant leases of real property with a trustee or lender. [*Such*]
34 **The** leases may be for a term [*which*] **that** ends on the date on which all amounts due under a fi-
35 nancing agreement have been paid or provision for payment has been made, or 10 years after the
36 last scheduled payment under a financing agreement, whichever is later. [*Such*] **The** leases may
37 grant the trustee or lender the right to evict the state and exclude it from possession of the real
38 property for the term of the lease if the state fails to pay when due the amounts scheduled to be
39 paid under a financing agreement or otherwise defaults under a financing agreement. Upon default,
40 the trustee or lender may sublease the [*land*] **real property** to third parties and apply any rentals
41 toward payments scheduled to be made under a financing agreement.

42 (f) Subject to ORS 283.087 (2)(b), grant security interests in personal property to trustees or
43 lenders. [*Such*] **The** security interests [*shall*] attach and [*be*] **are** perfected on the date the state
44 takes possession of the personal property, or the date the lender advances money under a financing
45 agreement, whichever is later. A security interest authorized by this section [*shall have*] **has** priority

1 over all other liens and claims. Upon default, the secured party *[shall have]* **has** the rights and
 2 remedies available to a secured party under ORS chapter 79 for a first, perfected security interest
 3 in goods and fixtures. *[No later than]* **Within** 10 days after a security interest authorized by this
 4 section attaches, the state shall cause a financing statement for the security interest to be filed with
 5 the Secretary of State in the same manner as financing statements are filed for goods[;]. However,
 6 failure to file *[such a statement shall]* **the statement does** not affect the perfection of the security
 7 interest.

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

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

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

25 (2) As used in this section[:],

26 *[(a) "Financing costs" means the costs or expenses that the State Treasurer or the Director of the*
 27 *Oregon Department of Administrative Services determines are necessary or desirable in connection with*
 28 *entering into financing agreements and maintaining the certificate of participation program, including*
 29 *but not limited to paying:]*

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

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

33 *[(C) Amounts due in connection with the investment of proceeds of financing agreements.]*

34 *[(b)] "state agency" has the meaning given that term in ORS 286A.730.*

35 **SECTION 5.** ORS 286A.001 is amended to read:

36 286A.001. As used in this chapter:

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

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

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

42 (2) "Bond":

43 (a) Means a contractual undertaking or instrument of the State of Oregon to repay borrowed
 44 moneys.

45 *[(b) Does not mean a financing agreement, as defined in ORS 283.085, if the principal amount of*

1 *the agreement is \$100,000 or less, or a credit enhancement device.]*

2 **(b) Does not mean:**

3 **(A) A credit enhancement device.**

4 **(B) An agreement that satisfies the definition of a financing agreement in ORS 283.085**
5 **but is authorized by a provision of law other than ORS 283.085 to 283.092 or section 1 of this**
6 **2013 Act when the principal amount of the agreement is \$100,000 or less.**

7 **(C) A financing agreement entered into under section 1 of this 2013 Act.**

8 (3) "Counterparty" means an entity with whom the State of Oregon enters into an agreement for
9 exchange of interest rates.

10 (4) "Credit enhancement device":

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

14 (b) Does not mean a bond.

15 (5) "Credit enhancement device fee" means a payment required to be made to the provider of a
16 credit enhancement device securing a bond or securing an agreement for the exchange of interest
17 rates.

18 (6) "General obligation bond" means a bond that constitutes indebtedness of the state under
19 [section 7,] Article XI, **section 7**, of the Oregon Constitution, and that is exempt from the \$50,000
20 limitation on indebtedness set forth in that section.

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

24 (8) "Refunding bond" means a bond of the State of Oregon that is issued to refund another bond,
25 regardless of whether the refunding is on a current, advance, forward delivery, synthetic or other
26 basis.

27 (9) "Related agency" means the state agency that requests the State Treasurer to issue bonds
28 pursuant to ORS 286A.025 or for which the State Treasurer has issued bonds.

29 (10) "Related bond" means a bond for which the State of Oregon enters into an agreement for
30 exchange of interest rates.

31 (11) "Revenue" means all fees, tolls, excise taxes, assessments, property taxes and other taxes,
32 rates, charges, rentals and other income or receipts derived by a state agency or to which a state
33 agency is entitled.

34 (12) "Revenue bond" means a bond of the State of Oregon that is not a general obligation bond.

35 (13) "State agency":

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

39 (b) Does not include:

40 (A) A statewide elected judge;

41 (B) The State Treasurer;

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

43 (D) The Oregon Health and Science University;

44 (E) A special government body, as defined in ORS 174.117, except to the extent a special gov-
45 ernment body must be considered a state agency in order to achieve the purposes of Article XI-K

1 of the Oregon Constitution; or

2 (F) A semi-independent state agency listed in ORS 182.454, 377.835 or 674.305, or any other state
3 agency denominated by statute as a semi-independent state agency.

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

7 **SECTION 6.** ORS 367.040 is amended to read:

8 367.040. (1) Notwithstanding ORS 283.087 [~~5~~] (4), an agency may obtain an infrastructure loan
9 **the principal amount of which, when combined with the principal amount of financing**
10 **agreements previously entered into for the same project, is more than \$100,000 for the**
11 **project.** An agency may agree to pay the infrastructure loan from any or all of the available moneys
12 of the agency and may pledge all or any portion of those moneys to repay the infrastructure loan.
13 An infrastructure loan of an agency does not constitute a debt of the state or a lending of the credit
14 of the state within the meaning of any constitutional or statutory limitation.

15 (2) If an infrastructure loan is made to an agency, the terms of the infrastructure loan contract
16 bind the State of Oregon and the agency, and the agency shall unconditionally repay the
17 infrastructure loan from the moneys the agency has pledged in accordance with the terms of the
18 infrastructure loan contract.

19 **SECTION 7. Section 1 of this 2013 Act and the amendments to ORS 283.085, 283.087,**
20 **283.089, 286A.001 and 367.040 by sections 2 to 6 of this 2013 Act apply to financing agreements**
21 **entered into on or after July 1, 2013.**

22 **SECTION 8. This 2013 Act being necessary for the immediate preservation of the public**
23 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
24 **July 1, 2013.**

25 _____