

Enrolled Senate Bill 266

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 Senate Interim Committee on Education and Workforce Development for Oregon University System)

CHAPTER

AN ACT

Relating to financing agreements; creating new provisions; amending ORS 283.085, 283.087, 283.089 and 367.040; and declaring an emergency.

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

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

(a) "Financing agreement" means a lease purchase agreement, an installment sale agreement, a loan agreement or any other agreement entered into under this section:

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

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

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

(b) "Higher education financing revenue" means:

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

(B) Moneys appropriated, allocated or otherwise made available by the Legislative Assembly to the Oregon University System, or a public university in the system, that are lawfully available to pay costs related to financing agreements entered into pursuant to this section.

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

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

(a) The Oregon University System may not pay amounts due under the financing agreement from any source other than higher education financing revenue. If higher education financing revenue is not sufficient to pay amounts due under a financing agreement, the

lender may exercise property rights granted by the Oregon University System in the financing agreement against the property that was purchased with proceeds of the financing agreement and may apply the amounts received to payments scheduled to be made under the financing agreement.

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

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

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

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

(a) Subject to ORS 283.085 to 283.092.

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

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

(a) "Financing agreement" has the meaning given that term in ORS 283.085.

(b) "State agency" has the meaning given that term in ORS 283.089.

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

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

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

SECTION 3. ORS 283.085 is amended to read:

283.085. As used in ORS 283.085 to 283.092:

(1) "Available funds" means funds appropriated or otherwise made available by the Legislative Assembly to pay amounts due under a financing agreement for the fiscal period in which the payments are due, *[together with any]* unexpended proceeds of the financing agreement~~*[, and any]*~~ and reserves or other amounts *[which]* **that** have been deposited in trust to pay amounts due under the financing agreement.

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

[(3) "Director" means the Director of the Oregon Department of Administrative Services.]

[(4)(a)] (3) "Financing agreement" means a lease purchase agreement, an installment sale agreement, a loan agreement or any other agreement:

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

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

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

[(D)] (d) To finance all or a portion of the state's pension liabilities for retirement, health care or disability benefits, in an amount that produces net proceeds that do not exceed the State

Treasurer's estimate of those liabilities based on information provided to the State Treasurer by the Public Employees Retirement System; or

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

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

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

(a) Amounts due under financing agreements;

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

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

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

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

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

[(8) "Treasurer" means the State Treasurer.]

SECTION 4. ORS 283.087 is amended to read:

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

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

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

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

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

[(4) The limitations of subsection (3) of this section shall not apply to financing agreements which are used to refinance previously executed financing agreements. The expenditure of funds used to finance previously executed financing agreements and pay the costs incurred to issue the new financing agreements shall be recorded using administrative budget limitations.]

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

(b) Neither the director nor any other agency of the state may grant property rights in property unless the property is being acquired, substantially improved or refinanced with proceeds of a financing agreement entered into under ORS 283.085 to 283.092 or the property

is land on which improvements financed, in whole or in part, under ORS 283.085 to 283.092 are located.

(c) A financing agreement with a principal amount in excess of \$100,000 is subject to the requirements of ORS chapter 286A, and the director may exercise the powers granted to a related agency, as defined in ORS 286A.001, with respect to a financing agreement described in this paragraph.

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

(4) For purposes of this section, the principal amount of a financing agreement, other than a financing agreement to refinance a financing agreement, exceeds \$100,000 if the principal amount, when combined with the principal amount of a financing agreement, other than a financing agreement to refinance a financing agreement, previously issued for the same project exceeds \$100,000.

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

SECTION 5. ORS 283.089 is amended to read:

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

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

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

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

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

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

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

section attaches, the state shall cause a financing statement for the security interest to be filed with the Secretary of State in the same manner as financing statements are filed for goods[;]. However, failure to file [*such a statement shall*] **the statement does** not affect the perfection of the security interest.

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

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

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

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

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

[(A) Amounts due under financing agreements;]

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

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

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

SECTION 6. ORS 367.040 is amended to read:

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

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

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

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

Passed by Senate July 6, 2013

.....
Robert Taylor, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House July 7, 2013

.....
Tina Kotek, Speaker of House

Received by Governor:

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

Approved:

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

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

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

.....
Kate Brown, Secretary of State