

House Bill 4111

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Transportation and Economic Development for Innovation in Infrastructure Task Force)

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 **as introduced**.

Establishes Infrastructure Innovation Oregon as public advisory agency responsible for developing policy and programs in area of performance-based public infrastructure projects and providing consultation and services to units of government with respect to public infrastructure projects.

Creates board of directors to govern Infrastructure Innovation Oregon. Directs board to appoint executive officer to have supervision and control of Infrastructure Innovation Oregon. Specifies duties and powers of Infrastructure Innovation Oregon to facilitate public infrastructure project procurement. Requires executive officer to submit annual report to State Treasurer, Governor and Legislative Assembly.

Establishes Infrastructure Innovation Oregon Fund. Continuously appropriates moneys in fund to Infrastructure Innovation Oregon.

Requires units of government intending to undertake certain large-capital public infrastructure projects to submit descriptions of projects to Infrastructure Innovation Oregon to screen for procurement options. Authorizes Infrastructure Innovation Oregon to complete business case analysis of certain projects. Establishes requirements for use of performance-based method by unit of government procuring public infrastructure project.

Authorizes appointment of special assistant attorneys general to evaluate public infrastructure delivery agreements.

Exempts certain records of private entities from public disclosure if submitted in course of negotiating public infrastructure delivery agreement. Provides that executed public infrastructure delivery agreements are subject to disclosure except for private entities' financial or commercial information customarily kept confidential from competitors. Authorizes review of determination to deny disclosure of public records.

Directs Governor and State Treasurer to appoint representatives to West Coast Infrastructure Exchange. Directs Infrastructure Innovation Oregon, in consultation with exchange, to make recommendation for legislation to Legislative Assembly.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public infrastructure; creating new provisions; amending ORS 192.490 and 244.050; ap-
3 propriating money; and declaring an emergency.

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

5 **SECTION 1. The Legislative Assembly finds that:**

6 **(1) Public infrastructure is essential to a vibrant economy. Oregon's needs for many**
7 **kinds of infrastructure development cannot be met using traditional development and fi-**
8 **ancing methods. To close an expected multibillion dollar investment gap for the develop-**
9 **ment of critical public infrastructure and to secure a sound and resilient economy, Oregon**
10 **must attract innovation in design, financing and asset management.**

11 **(2) Some public infrastructure projects require expertise in working with private capital**
12 **providers and in identifying, procuring, negotiating and implementing projects using a**
13 **performance-based, life-cycle value method and other contracting methods. To attract pri-**
14 **rate capital, properly implement innovative methods and protect the public interest, Oregon**
15 **must establish a center of expertise that allows the state to take advantage of opportunities**
16 **for innovative financing and regional infrastructure development while minimizing public**

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 risk and maximizing the value obtained for taxpayer dollars. The design and implementation
 2 of such a center of expertise should draw from successful models that incorporate the nec-
 3 essary flexibility while preserving public transparency, accountability and exemplary con-
 4 tracting practices.

5 (3) To encourage competition for public infrastructure projects among the most desirable
 6 bidders, the western states need to establish themselves as a marketplace for innovative
 7 infrastructure financing. This can best be accomplished through regional collaboration to
 8 establish best practices, coordinate interstate projects and increase the visibility of regional
 9 projects.

10 **SECTION 2.** Section 1 of this 2014 Act is repealed on January 2, 2019.

11 **SECTION 3.** Sections 4 to 19 of this 2014 Act are added to and made a part of ORS
 12 chapter 276.

13 **SECTION 4.** As used in sections 4 to 19 of this 2014 Act:

14 (1) “Availability payment” means a payment by the owner of a public infrastructure
 15 project to compensate the payee for making the public infrastructure available by means of,
 16 singly or in any combination, design, construction, financing or maintenance services.

17 (2) “Business case analysis” means a detailed analysis of a proposed public infrastructure
 18 project to determine the optimum method of procurement for the project.

19 (3) “Owner” or “project owner” means the unit of government that undertakes a public
 20 infrastructure project for property that it owns, occupies or operates.

21 (4) “Performance-based public infrastructure project” means a public infrastructure
 22 project procured and implemented using a performance-based method determined by
 23 Infrastructure Innovation Oregon pursuant to section 15 of this 2014 Act.

24 (5) “Procurement” means, for the purpose of, singly or in any combination, designing,
 25 constructing, financing or maintaining, the creation, new construction or renovation of
 26 public infrastructure, the process of identifying service providers, soliciting bids, selecting
 27 service providers and negotiating, implementing and monitoring performance under agree-
 28 ments entered into with service providers.

29 (6) “Public infrastructure” means, but is not limited to, the following, or any combination
 30 of the following, when undertaken by a unit of government:

- 31 (a) Facilities to develop sources of, store or deliver clean water;
- 32 (b) Facilities to capture, treat or dispose of sewage, storm water or wastewater;
- 33 (c) Facilities for solid waste management, treatment, disposal or conversion;
- 34 (d) Highways as defined in ORS 366.005;
- 35 (e) Street lighting or other public safety installations;
- 36 (f) Passenger or freight rail or streetcar systems or networks;
- 37 (g) Energy conservation, generation or transmission facilities or improvements;
- 38 (h) Data transmission facilities or equipment;
- 39 (i) Schools;
- 40 (j) Courts or other facilities necessary for the administration of justice; or
- 41 (k) Improvements to property owned, occupied or operated by any unit of government.

42 (7) “Public infrastructure delivery agreement” means all agreements entered into by
 43 units of government and private-sector partners to implement a public infrastructure
 44 project.

45 (8) “Public infrastructure project” includes all stages of a project undertaken by the

1 owner to develop public infrastructure, including, but not limited to, planning, acquiring, fi-
2 nancing, developing, designing, constructing, reconstructing, replacing, improving, main-
3 taining, managing, repairing, leasing or operating.

4 (9) "Unit of government" means:

5 (a) Any unit of the state government as defined in ORS 174.111;

6 (b) Any unit of local government as defined in ORS 174.116; or

7 (c) A special government body as defined in ORS 174.117.

8 **SECTION 5.** (1) Infrastructure Innovation Oregon is established as a public advisory
9 agency and shall:

10 (a) Exercise and carry out all powers, rights and privileges that are expressly conferred
11 upon it or implied by law;

12 (b) Be an independent public advisory agency with statewide purposes and missions and
13 without territorial boundaries; and

14 (c) Be a governmental entity but may not be considered a unit of local or municipal
15 government or a state agency for purposes of state statutes or provisions of the Oregon
16 Constitution.

17 (2) Infrastructure Innovation Oregon shall:

18 (a) Develop policy and programs in the area of performance-based public infrastructure
19 projects;

20 (b) Serve as the center of expertise for performance-based public infrastructure projects
21 for units of government throughout this state;

22 (c) Provide services to units of government for purposes of procurement of
23 performance-based public infrastructure projects under section 17 of this 2014 Act;

24 (d) Provide analysis, procurement, contracting, financing, implementation and outcome
25 measurement services to units of government related to performance-based public
26 infrastructure projects;

27 (e) Participate in governmental outreach to suppliers, contractors, workers, service
28 providers and stakeholders with respect to performance-based public infrastructure projects;

29 (f) Assist units of government in procurement of public infrastructure projects using
30 other methods as requested by project owners and deemed appropriate by Infrastructure
31 Innovation Oregon; and

32 (g) Assist units of government in identifying, evaluating and implementing any method
33 of procurement or financing of public infrastructure projects.

34 **SECTION 6.** (1)(a) Infrastructure Innovation Oregon is a participating public employer
35 as defined in ORS 238A.005.

36 (b) Infrastructure Innovation Oregon is a public employer as defined in ORS 243.650.

37 (c) Except as otherwise provided by law, employees of Infrastructure Innovation Oregon
38 are eligible to receive the same benefits as state employees and are entitled to retain their
39 State of Oregon hire dates, transfer rights and job bidding rights, all without loss of senior-
40 ity, and to the direct transfer of all accumulated state agency leaves.

41 (2) ORS chapters 278 and 295 and ORS 30.260 to 30.300 and 200.035 apply to Infrastructure
42 Innovation Oregon.

43 (3) Meetings of the board of directors of Infrastructure Innovation Oregon are subject
44 to ORS 192.610 to 192.690 and 192.695 unless the agenda is limited to transaction decisions
45 with respect to public infrastructure delivery agreements or consideration of records, com-

1 **munications or information that are confidential under section 19 (1) of this 2014 Act.**

2 **(4)(a) ORS chapters 182, 240, 270, 273, 276, 283, 291, 292 and 293 and ORS 184.305 to 184.345,**
 3 **184.360, 243.696, 279.835 to 279.855, 282.010 to 282.150 and 357.805 to 357.895 do not apply to**
 4 **Infrastructure Innovation Oregon.**

5 **(b) Notwithstanding paragraph (a) of this subsection, ORS 182.100, 182.109, 240.167,**
 6 **293.115, 293.117, 293.130, 293.169, 293.171, 293.205 to 293.225, 293.250, 293.265 to 293.275, 293.280,**
 7 **293.285, 293.295, 293.321, 293.353, 293.375, 293.406, 293.455, 293.465 to 293.485, 293.490, 293.525,**
 8 **293.701 to 293.857, 293.880 and 293.990 apply to Infrastructure Innovation Oregon.**

9 **(5) Infrastructure Innovation Oregon is an integral part of the State of Oregon, but is**
 10 **not subject to any provision of law enacted after January 1, 2014, with respect to any state**
 11 **agency or other governmental entity, that is unique to state agencies or governmental enti-**
 12 **ties, unless the enacted provision:**

13 **(a) Specifically provides that it applies to Infrastructure Innovation Oregon; or**

14 **(b) Relates to a provision of law identified in subsections (1) to (3) and (4)(b) of this sec-**
 15 **tion.**

16 **SECTION 7. (1) Infrastructure Innovation Oregon is governed by a board of directors**
 17 **consisting of:**

18 **(a) Nine voting members, as follows:**

19 **(A) The State Treasurer;**

20 **(B) Seven people with relevant expertise who are appointed by the Governor to terms of**
 21 **four years; and**

22 **(C) One elected official, other than the State Treasurer or a member of the Legislative**
 23 **Assembly, who is appointed by the Governor to a term of two years; and**

24 **(b) Five nonvoting members, as follows:**

25 **(A) The executive officer of Infrastructure Innovation Oregon, who serves ex officio;**

26 **(B) Two members of the House of Representatives appointed by the Speaker of the House**
 27 **of Representatives to terms of two years; and**

28 **(C) Two members of the Senate appointed by the President of the Senate to terms of two**
 29 **years.**

30 **(2) Appointments made by the Governor under subsection (1)(a)(B) and (C) of this section**
 31 **are subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565.**

32 **(3) Appointed members may be reappointed to the board.**

33 **(4) Board members who are appointed pursuant to subsection (1)(a)(B) of this section**
 34 **may be compensated for service on the board. Board members may be reimbursed for rea-**
 35 **sonable expenses incurred in meeting and traveling on board business, including a per diem**
 36 **allowance.**

37 **SECTION 8. The board of directors of Infrastructure Innovation Oregon shall:**

38 **(1) Adopt policies for Infrastructure Innovation Oregon.**

39 **(2) Adopt a biennial budget for operations and projects of Infrastructure Innovation**
 40 **Oregon, in accordance with section 9 of this 2014 Act.**

41 **(3) Appoint the executive officer of Infrastructure Innovation Oregon in accordance with**
 42 **section 11 of this 2014 Act.**

43 **(4) Adopt rules for purposes of Infrastructure Innovation Oregon's advisory functions**
 44 **and the procurement of performance-based public infrastructure projects by project owners**
 45 **under section 17 of this 2014 Act.**

1 (5) Take any other actions the board considers necessary to the performance of
 2 Infrastructure Innovation Oregon's duties under sections 4 to 19 of this 2014 Act.

3 **SECTION 9.** (1) The board of directors of Infrastructure Innovation Oregon shall adopt
 4 a biennial budget, using generally accepted accounting principles for state and local govern-
 5 ments.

6 (2)(a) A proposed budget shall be discussed and voted on at a public meeting held not
 7 more than 30 days after notice of the meeting is published.

8 (b) The notice shall include the time and location of the meeting and the means by which
 9 a copy of the proposed budget may be obtained prior to the meeting.

10 (3) The budget adopted pursuant to this section is not subject to review or approval by
 11 the Legislative Assembly, modification by the Emergency Board or any allotment process,
 12 and the board of directors is not required to seek expenditure limitation approval from the
 13 Legislative Assembly.

14 (4)(a) Infrastructure Innovation Oregon's accounts and financial affairs are subject to
 15 audit under ORS 297.210.

16 (b) Notwithstanding paragraph (a) of this subsection, the board of directors may com-
 17 mission an independent audit of Infrastructure Innovation Oregon's accounts and financial
 18 affairs.

19 **SECTION 10.** (1) The Infrastructure Innovation Oregon Fund is established in the State
 20 Treasury, separate and distinct from the General Fund. The Infrastructure Innovation
 21 Oregon Fund consists of moneys collected or received by Infrastructure Innovation Oregon
 22 as follows:

- 23 (a) All payments received from services contracts;
- 24 (b) All fees;
- 25 (c) State funds received from any state agency;
- 26 (d) All gifts and donations to Infrastructure Innovation Oregon; and
- 27 (e) Interest earned on moneys in the fund.

28 (2) The moneys in the Infrastructure Innovation Oregon Fund are continuously appro-
 29 priated to Infrastructure Innovation Oregon for purposes of sections 4 to 19 of this 2014 Act.

30 **SECTION 11.** (1) Infrastructure Innovation Oregon shall be under the supervision and
 31 control of an executive officer appointed by the board of directors.

32 (2) The executive officer shall serve at the pleasure of the board.

33 (3) The executive officer shall devote the entire time of the executive officer to the per-
 34 formance of the activities of Infrastructure Innovation Oregon, which may include partic-
 35 ipation in the West Coast Infrastructure Exchange.

36 (4) The executive officer shall receive a salary fixed by the board and shall be reimbursed
 37 for all expenses actually and necessarily incurred in the performance of official duties. The
 38 salary and reimbursement for expenses shall be paid out of the Infrastructure Innovation
 39 Oregon Fund established under section 10 of this 2014 Act.

40 **SECTION 12.** (1) The executive officer of Infrastructure Innovation Oregon shall:

41 (a) Appoint all subordinate officers and employees of Infrastructure Innovation Oregon,
 42 including legal counsel, and prescribe their duties and compensation.

43 (b) Provide for programs to deliver the services assigned to Infrastructure Innovation
 44 Oregon by statute and the board of directors and undertake long-range planning necessary
 45 for the effective delivery of those services.

1 (c) Have a seal bearing the name of Infrastructure Innovation Oregon.

2 (2) The executive officer may:

3 (a) For purposes of administration and control, and with the approval of the board, or-
4 ganize and reorganize Infrastructure Innovation Oregon in whatever manner the executive
5 officer considers appropriate to carry out the duties, functions and powers of Infrastructure
6 Innovation Oregon.

7 (b) Delegate to officers and employees of Infrastructure Innovation Oregon such re-
8 sponsibility and authority as the executive officer determines necessary.

9 (c) Sue and be sued in the name of the executive officer of Infrastructure Innovation
10 Oregon.

11 (d) Serve as a representative of the State of Oregon in the West Coast Infrastructure
12 Exchange.

13 **SECTION 13.** (1) Infrastructure Innovation Oregon shall:

14 (a) Serve as a resource throughout this state with respect to the development of public
15 infrastructure financing resources, projects and the training of project owners in appropriate
16 methods of procurement of public infrastructure projects.

17 (b) Conduct outreach programs to rural communities with respect to public
18 infrastructure projects.

19 (c) Support regional solutions teams in the area of public infrastructure projects, in-
20 cluding the identification and structuring of bundled projects.

21 (2) Infrastructure Innovation Oregon may:

22 (a) Adopt bylaws and rules.

23 (b) Establish and collect fees.

24 (c) Seek gifts and donations.

25 (d) Borrow funds.

26 (e) Hold and spend funds.

27 (f) Purchase insurance.

28 (g) Acquire property, except by means of eminent domain.

29 (h) Lease real property for the administrative use of Infrastructure Innovation Oregon
30 or to facilitate public infrastructure projects, or both.

31 (i) Make services and facilities available to units of government for fees.

32 (j) Enter into agreements with owners of public infrastructure projects to provide ser-
33 vices related to the projects for fees.

34 (k) Delegate its approval and signature authority.

35 (L) Perform any lawful act necessary to achieve the policy goals of Infrastructure Inno-
36 vation Oregon.

37 **SECTION 14.** (1) Not later than July 1 of each year, the executive officer of
38 Infrastructure Innovation Oregon shall submit a report meeting the requirements of sub-
39 section (2) of this section to the State Treasurer, the Governor and the Legislative Assembly
40 in the manner required under ORS 192.245.

41 (2) The report required under this section shall include a statement of:

42 (a) Project activities;

43 (b) Infrastructure Innovation Oregon's contributions to policy development;

44 (c) Regional and statewide collaboration to standardize practices and build capacity for
45 public infrastructure projects;

1 (d) Assistance offered to rural communities by Infrastructure Innovation Oregon or
2 pursuant to policies adopted by Infrastructure Innovation Oregon;

3 (e) The biennial budget adopted by the board of directors of Infrastructure Innovation
4 Oregon pursuant to section 9 of this 2014 Act;

5 (f) A detailed financial report of sources and uses of funds for operations; and

6 (g) Any other information the executive officer considers relevant.

7 **SECTION 15.** (1)(a)(A) For a public infrastructure project with estimated total capital
8 expenditures of greater than \$50 million, of which at least \$20 million consists of funds to
9 be received from a state agency or appropriated by the Legislative Assembly, or both, the
10 unit of government intending to undertake the project shall submit a description of the
11 proposed project to Infrastructure Innovation Oregon and collaborate with Infrastructure
12 Innovation Oregon to screen the proposed project for procurement options.

13 (B) A public infrastructure project may not be subdivided to avoid the requirement of
14 submitting a description of the proposed project to Infrastructure Innovation Oregon under
15 this subsection.

16 (C) As soon as practicable after January 1 of each year, the \$50 million and \$20 million
17 threshold amounts in this paragraph shall be adjusted as follows:

18 (i) Divide the average U.S. City Average Consumer Price Index for the calendar year just
19 ended by the average U.S. City Average Consumer Price Index for 2014; and then

20 (ii) Multiply \$50 million and \$20 million, respectively, by the indexing factor determined
21 under sub-subparagraph (i) of this subparagraph.

22 (D) As used in this paragraph, "U.S. City Average Consumer Price Index" means the U.S.
23 City Average Consumer Price Index for All Urban Consumers (All Items) as published by the
24 Bureau of Labor Statistics of the United States Department of Labor.

25 (b) A unit of government intending to undertake a public infrastructure project with es-
26 timated capital expenditures of less than the indexed threshold amounts in paragraph (a) of
27 this subsection may submit a description of the proposed project to Infrastructure Inno-
28 vation Oregon for a recommendation under subsection (2) of this section.

29 (2) Within 30 days of a submission under subsection (1) of this section, Infrastructure
30 Innovation Oregon shall make a recommendation to the project owner as to whether the
31 project is appropriate for a business case analysis.

32 (3)(a) A project owner may request that Infrastructure Innovation Oregon conduct a
33 business case analysis of a proposed public infrastructure project.

34 (b) Within a reasonable time after receiving a request under paragraph (a) of this sub-
35 section, Infrastructure Innovation Oregon shall negotiate an agreement with the project
36 owner pursuant to which Infrastructure Innovation Oregon provides services to the project
37 owner for the purpose of completing a business case analysis.

38 (4)(a)(A) If the outcome of the business case analysis is that a performance-based method
39 is the optimum method of procurement for the project, and the project owner decides to
40 move forward with the project in accordance with the outcome, the project must be procured
41 in the manner required under section 17 of this 2014 Act.

42 (B) For purposes of section 17 (1) of this 2014 Act, a recommendation by Infrastructure
43 Innovation Oregon under this paragraph shall be deemed conclusive as to the facts that
44 support the recommendation.

45 (b) If the outcome of the business case analysis is that the optimum method of procure-

1 ment for the project is a method other than a performance-based method and the project
 2 owner requests assistance in procurement from Infrastructure Innovation Oregon,
 3 Infrastructure Innovation Oregon may negotiate an agreement with the project owner pur-
 4 suant to which Infrastructure Innovation Oregon provides services to the project owner for
 5 the purpose of procuring the project.

6 **SECTION 16.** Infrastructure Innovation Oregon shall serve an advisory function on a
 7 fee-for-services basis with respect to public infrastructure delivery agreements for all
 8 performance-based public infrastructure projects undertaken in this state.

9 **SECTION 17.** (1)(a) A unit of government undertaking a performance-based public
 10 infrastructure project may enter into procurement agreements and public infrastructure
 11 delivery agreements with private-sector partners under the exemption provided in ORS
 12 279C.335 (2)(c) if:

13 (A) A business case analysis provided by Infrastructure Innovation Oregon pursuant to
 14 section 15 of this 2014 Act includes information and conclusions in support of the findings
 15 required for purposes of ORS 279C.335 (2)(c);

16 (B) The required findings are made by the applicable body; and

17 (C) All other applicable requirements are met.

18 (b) The project owner shall consult with Infrastructure Innovation Oregon when evalu-
 19 ating risk with respect to the project and negotiating all agreements constituting the public
 20 infrastructure delivery agreement.

21 (2) In determining whether to enter into a public infrastructure delivery agreement:

22 (a) A unit of government must make findings that include:

23 (A) Performance requirements;

24 (B) Methods for obtaining the highest value for public moneys expended on a public
 25 infrastructure project for the entire life cycle of the public infrastructure that is the subject
 26 of the project;

27 (C) The efficiency of the proposed financing and the allocation of risk;

28 (D) The economic strength and relevant experience of the private-sector partner;

29 (E) Procedures to promote competition among contractors and subcontractors on the
 30 project and to ensure that contractors have a history of compliance with standards for
 31 health and safety, wages and working hours;

32 (F) Methods for optimizing the benefits of the project for Oregon suppliers, contractors,
 33 vendors and workers;

34 (G) Protections for workers through prevailing rates of wage and support for organizing
 35 and collective bargaining rights of all workers subject to prevailing rates of wage;

36 (H) Provision of workers' compensation insurance for workers on projects;

37 (I) Potential benefits to disadvantaged, minority, women and emerging small business
 38 enterprises and to individuals with disabilities;

39 (J) The responsiveness of the design to climate-change issues; and

40 (K) Any other criteria that encourage innovation, efficiency and community and eco-
 41 nomic benefits.

42 (b) A unit of government may:

43 (A) Consider any source of financing, including fees or tolls; and

44 (B) Recover predevelopment and other costs from project financing.

45 (3)(a) A public infrastructure delivery agreement must include the following provisions:

1 (A) When project owners and private-sector partners enter the infrastructure project.

2 (B) How tasks and risks are allocated among the parties to the agreements.

3 (C) Financing.

4 (D) The allocation of cost overruns.

5 (E) Penalties for failure to meet contractual performance specifications, including failure
6 to comply with standards for health and safety, wages and working hours.

7 (F) Incentives for exceeding contractual performance specifications.

8 (G) Accounting standards to be used by all parties to the agreements.

9 (H) Prevailing rates of wage and benefits to be paid to all workers subject to prevailing
10 rates of wage on the project.

11 (I) The organizing and collective bargaining rights of maintenance workers. Any agree-
12 ment constituting the public infrastructure delivery agreement that transfers publicly man-
13 aged facilities to private management or maintenance shall require the retention of the
14 existing workforce and maintain and protect their wages, benefits and representation rights.

15 (b) A public infrastructure delivery agreement may:

16 (A) Include provisions for availability payments.

17 (B) Along with related financial pledges, have terms not to exceed 45 years.

18 (C) Provide for payments in event of early termination.

19 **SECTION 18.** (1) At the request of Infrastructure Innovation Oregon, the Attorney Gen-
20 eral may appoint special assistant attorneys general for the purpose of evaluating public
21 infrastructure delivery agreements entered into or to be entered into by units of govern-
22 ment.

23 (2) Special assistant attorneys general appointed under subsection (1) of this section shall
24 be under the direction and control of the Attorney General and may:

25 (a) Advise Infrastructure Innovation Oregon concerning the legality of specific proposed
26 agreements;

27 (b) Advise Infrastructure Innovation Oregon on legal procedures and practices related
28 to certain public infrastructure projects to which the agreements relate;

29 (c) Assist Infrastructure Innovation Oregon, or a unit of government, in negotiating
30 agreements that constitute a public infrastructure delivery agreement;

31 (d) Assist Infrastructure Innovation Oregon, or a unit of government, in preparing any
32 document related to a public infrastructure project;

33 (e) Advise Infrastructure Innovation Oregon, or a unit of government, regarding ac-
34 counting, investment and tax requirements applicable to a public infrastructure project; and

35 (f) Advise Infrastructure Innovation Oregon regarding any relevant federal securities
36 laws or other laws and related disclosure requirements.

37 (2) When the Attorney General, as part of the review under ORS 291.047, reviews an
38 agreement entered into under section 17 of this 2014 Act, the Attorney General shall defer
39 to the business judgment of Infrastructure Innovation Oregon and the unit of government.

40 **SECTION 19.** (1)(a) Records, communications or information submitted to Infrastructure
41 Innovation Oregon, or to a unit of government, by a private-sector entity in the course of
42 negotiating any agreement in a public infrastructure delivery agreement are exempt from
43 disclosure under ORS 192.410 to 192.505.

44 (b)(A) Executed public infrastructure delivery agreements are public records subject to
45 disclosure under ORS 192.410 to 192.505.

1 **(B) Notwithstanding subparagraph (A) of this paragraph, financial or commercial infor-**
 2 **mation contained in any agreement constituting a public infrastructure delivery agreement**
 3 **that would customarily be kept confidential from competitors is exempt from disclosure un-**
 4 **der ORS 192.410 to 192.505.**

5 **(2) Notwithstanding subsection (1) of this section, ORS 192.450 applies when a person is**
 6 **denied the right to inspect or receive a copy of a public record of Infrastructure Innovation**
 7 **Oregon.**

8 **(3)(a) Notwithstanding subsection (2) of this section, the board of directors of**
 9 **Infrastructure Innovation Oregon may make a determination denying the right of any person**
 10 **to inspect or receive a copy of any public record of Infrastructure Innovation Oregon.**

11 **(b) Upon issuance of the determination, any proceedings against Infrastructure Inno-**
 12 **vation Oregon with respect to disclosure of records subject to the determination are per-**
 13 **manently stayed.**

14 **(c) A party requesting disclosure of records of Infrastructure Innovation Oregon subject**
 15 **to a determination by the board pursuant to this section may seek review of the determi-**
 16 **nation in the manner allowed in ORS 192.480.**

17 **SECTION 20.** ORS 244.050, as operative until July 1, 2014, is amended to read:

18 244.050. (1) On or before April 15 of each year the following persons shall file with the Oregon
 19 Government Ethics Commission a verified statement of economic interest as required under this
 20 chapter:

21 (a) The Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the
 22 Bureau of Labor and Industries, district attorneys and members of the Legislative Assembly.

23 (b) Any judicial officer, including justices of the peace and municipal judges, except any pro tem
 24 judicial officer who does not otherwise serve as a judicial officer.

25 (c) Any candidate for a public office designated in paragraph (a) or (b) of this subsection.

26 (d) The Deputy Attorney General.

27 (e) The Legislative Administrator, the Legislative Counsel, the Legislative Fiscal Officer, the
 28 Secretary of the Senate and the Chief Clerk of the House of Representatives.

29 (f) The Chancellor and Vice Chancellors of the Oregon University System and the president and
 30 vice presidents, or their administrative equivalents, in each public university listed in ORS 352.002.

31 (g) The following state officers:

32 (A) Adjutant General.

33 (B) Director of Agriculture.

34 (C) Manager of State Accident Insurance Fund Corporation.

35 (D) Water Resources Director.

36 (E) Director of Department of Environmental Quality.

37 (F) Director of Oregon Department of Administrative Services.

38 (G) State Fish and Wildlife Director.

39 (H) State Forester.

40 (I) State Geologist.

41 (J) Director of Human Services.

42 (K) Director of the Department of Consumer and Business Services.

43 (L) Director of the Department of State Lands.

44 (M) State Librarian.

45 (N) Administrator of Oregon Liquor Control Commission.

- 1 (O) Superintendent of State Police.
- 2 (P) Director of the Public Employees Retirement System.
- 3 (Q) Director of Department of Revenue.
- 4 (R) Director of Transportation.
- 5 (S) Public Utility Commissioner.
- 6 (T) Director of Veterans' Affairs.
- 7 (U) Executive director of Oregon Government Ethics Commission.
- 8 (V) Director of the State Department of Energy.
- 9 (W) Director and each assistant director of the Oregon State Lottery.
- 10 (X) Director of the Department of Corrections.
- 11 (Y) Director of the Oregon Department of Aviation.
- 12 (Z) Executive director of the Oregon Criminal Justice Commission.
- 13 (AA) Director of the Oregon Business Development Department.
- 14 (BB) Director of the Office of Emergency Management.
- 15 (CC) Director of the Employment Department.
- 16 (DD) Chief of staff for the Governor.
- 17 (EE) Administrator of the Office for Oregon Health Policy and Research.
- 18 (FF) Director of the Housing and Community Services Department.
- 19 (GG) State Court Administrator.
- 20 (HH) Director of the Department of Land Conservation and Development.
- 21 (II) Board chairperson of the Land Use Board of Appeals.
- 22 (JJ) State Marine Director.
- 23 (KK) Executive director of the Oregon Racing Commission.
- 24 (LL) State Parks and Recreation Director.
- 25 (MM) Public defense services executive director.
- 26 (NN) Chairperson of the Public Employees' Benefit Board.
- 27 (OO) Director of the Department of Public Safety Standards and Training.
- 28 (PP) Chairperson of the Oregon Student Access Commission.
- 29 (QQ) Executive director of the Oregon Watershed Enhancement Board.
- 30 (RR) Director of the Oregon Youth Authority.
- 31 (SS) Director of the Oregon Health Authority.
- 32 (TT) Deputy Superintendent of Public Instruction.
- 33 **(UU) Executive officer of Infrastructure Innovation Oregon.**
- 34 (h) Any assistant in the Governor's office other than personal secretaries and clerical personnel.
- 35 (i) Every elected city or county official.
- 36 (j) Every member of a city or county planning, zoning or development commission.
- 37 (k) The chief executive officer of a city or county who performs the duties of manager or prin-
- 38 cipal administrator of the city or county.
- 39 (L) Members of local government boundary commissions formed under ORS 199.410 to 199.519.
- 40 (m) Every member of a governing body of a metropolitan service district and the executive of-
- 41 ficer thereof.
- 42 (n) Each member of the board of directors of the State Accident Insurance Fund Corporation.
- 43 (o) The chief administrative officer and the financial officer of each common and union high
- 44 school district, education service district and community college district.
- 45 (p) Every member of the following state boards and commissions:

- 1 (A) Board of Geologic and Mineral Industries.
- 2 (B) Oregon Business Development Commission.
- 3 (C) State Board of Education.
- 4 (D) Environmental Quality Commission.
- 5 (E) Fish and Wildlife Commission of the State of Oregon.
- 6 (F) State Board of Forestry.
- 7 (G) Oregon Government Ethics Commission.
- 8 (H) Oregon Health Policy Board.
- 9 (I) State Board of Higher Education.
- 10 (J) Oregon Investment Council.
- 11 (K) Land Conservation and Development Commission.
- 12 (L) Oregon Liquor Control Commission.
- 13 (M) Oregon Short Term Fund Board.
- 14 (N) State Marine Board.
- 15 (O) Mass transit district boards.
- 16 (P) Energy Facility Siting Council.
- 17 (Q) Board of Commissioners of the Port of Portland.
- 18 (R) Employment Relations Board.
- 19 (S) Public Employees Retirement Board.
- 20 (T) Oregon Racing Commission.
- 21 (U) Oregon Transportation Commission.
- 22 (V) Water Resources Commission.
- 23 (W) Workers' Compensation Board.
- 24 (X) Oregon Facilities Authority.
- 25 (Y) Oregon State Lottery Commission.
- 26 (Z) Pacific Northwest Electric Power and Conservation Planning Council.
- 27 (AA) Columbia River Gorge Commission.
- 28 (BB) Oregon Health and Science University Board of Directors.
- 29 (CC) Capitol Planning Commission.
- 30 (DD) Higher Education Coordinating Commission.
- 31 (EE) Oregon Growth Board.
- 32 (q) The following officers of the State Treasurer:
- 33 (A) Deputy State Treasurer.
- 34 (B) Chief of staff for the office of the State Treasurer.
- 35 (C) Director of the Investment Division.
- 36 (r) Every member of the board of commissioners of a port governed by ORS 777.005 to 777.725
- 37 or 777.915 to 777.953.
- 38 (s) Every member of the board of directors of an authority created under ORS 441.525 to 441.595.
- 39 **(t) Every member of the board of directors of Infrastructure Innovation Oregon.**
- 40 (2) By April 15 next after the date an appointment takes effect, every appointed public official
- 41 on a board or commission listed in subsection (1) of this section shall file with the Oregon Govern-
- 42 ment Ethics Commission a statement of economic interest as required under ORS 244.060, 244.070
- 43 and 244.090.
- 44 (3) By April 15 next after the filing deadline for the primary election, each candidate described
- 45 in subsection (1) of this section shall file with the commission a statement of economic interest as

1 required under ORS 244.060, 244.070 and 244.090.

2 (4) Within 30 days after the filing deadline for the general election, each candidate described in
 3 subsection (1) of this section who was not a candidate in the preceding primary election, or who
 4 was nominated for public office described in subsection (1) of this section at the preceding primary
 5 election by write-in votes, shall file with the commission a statement of economic interest as re-
 6 quired under ORS 244.060, 244.070 and 244.090.

7 (5) Subsections (1) to (4) of this section apply only to persons who are incumbent, elected or
 8 appointed public officials as of April 15 and to persons who are candidates on April 15. Subsections
 9 (1) to (4) of this section also apply to persons who do not become candidates until 30 days after the
 10 filing deadline for the statewide general election.

11 (6) If a statement required to be filed under this section has not been received by the commis-
 12 sion within five days after the date the statement is due, the commission shall notify the public of-
 13 ficial or candidate and give the public official or candidate not less than 15 days to comply with the
 14 requirements of this section. If the public official or candidate fails to comply by the date set by the
 15 commission, the commission may impose a civil penalty as provided in ORS 244.350.

16 **SECTION 21.** ORS 244.050 is amended to read:

17 244.050. (1) On or before April 15 of each year the following persons shall file with the Oregon
 18 Government Ethics Commission a verified statement of economic interest as required under this
 19 chapter:

20 (a) The Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the
 21 Bureau of Labor and Industries, district attorneys and members of the Legislative Assembly.

22 (b) Any judicial officer, including justices of the peace and municipal judges, except any pro tem
 23 judicial officer who does not otherwise serve as a judicial officer.

24 (c) Any candidate for a public office designated in paragraph (a) or (b) of this subsection.

25 (d) The Deputy Attorney General.

26 (e) The Legislative Administrator, the Legislative Counsel, the Legislative Fiscal Officer, the
 27 Secretary of the Senate and the Chief Clerk of the House of Representatives.

28 (f) The Chancellor and Vice Chancellors of the Oregon University System and the president and
 29 vice presidents, or their administrative equivalents, in each public university listed in ORS 352.002.

30 (g) The following state officers:

31 (A) Adjutant General.

32 (B) Director of Agriculture.

33 (C) Manager of State Accident Insurance Fund Corporation.

34 (D) Water Resources Director.

35 (E) Director of Department of Environmental Quality.

36 (F) Director of Oregon Department of Administrative Services.

37 (G) State Fish and Wildlife Director.

38 (H) State Forester.

39 (I) State Geologist.

40 (J) Director of Human Services.

41 (K) Director of the Department of Consumer and Business Services.

42 (L) Director of the Department of State Lands.

43 (M) State Librarian.

44 (N) Administrator of Oregon Liquor Control Commission.

45 (O) Superintendent of State Police.

- 1 (P) Director of the Public Employees Retirement System.
- 2 (Q) Director of Department of Revenue.
- 3 (R) Director of Transportation.
- 4 (S) Public Utility Commissioner.
- 5 (T) Director of Veterans' Affairs.
- 6 (U) Executive director of Oregon Government Ethics Commission.
- 7 (V) Director of the State Department of Energy.
- 8 (W) Director and each assistant director of the Oregon State Lottery.
- 9 (X) Director of the Department of Corrections.
- 10 (Y) Director of the Oregon Department of Aviation.
- 11 (Z) Executive director of the Oregon Criminal Justice Commission.
- 12 (AA) Director of the Oregon Business Development Department.
- 13 (BB) Director of the Office of Emergency Management.
- 14 (CC) Director of the Employment Department.
- 15 (DD) Chief of staff for the Governor.
- 16 (EE) Administrator of the Office for Oregon Health Policy and Research.
- 17 (FF) Director of the Housing and Community Services Department.
- 18 (GG) State Court Administrator.
- 19 (HH) Director of the Department of Land Conservation and Development.
- 20 (II) Board chairperson of the Land Use Board of Appeals.
- 21 (JJ) State Marine Director.
- 22 (KK) Executive director of the Oregon Racing Commission.
- 23 (LL) State Parks and Recreation Director.
- 24 (MM) Public defense services executive director.
- 25 (NN) Chairperson of the Public Employees' Benefit Board.
- 26 (OO) Director of the Department of Public Safety Standards and Training.
- 27 (PP) Executive director of the Higher Education Coordinating Commission.
- 28 (QQ) Executive director of the Oregon Watershed Enhancement Board.
- 29 (RR) Director of the Oregon Youth Authority.
- 30 (SS) Director of the Oregon Health Authority.
- 31 (TT) Deputy Superintendent of Public Instruction.
- 32 **(UU) Executive officer of Infrastructure Innovation Oregon.**
- 33 (h) Any assistant in the Governor's office other than personal secretaries and clerical personnel.
- 34 (i) Every elected city or county official.
- 35 (j) Every member of a city or county planning, zoning or development commission.
- 36 (k) The chief executive officer of a city or county who performs the duties of manager or prin-
- 37 cipal administrator of the city or county.
- 38 (L) Members of local government boundary commissions formed under ORS 199.410 to 199.519.
- 39 (m) Every member of a governing body of a metropolitan service district and the executive of-
- 40 ficer thereof.
- 41 (n) Each member of the board of directors of the State Accident Insurance Fund Corporation.
- 42 (o) The chief administrative officer and the financial officer of each common and union high
- 43 school district, education service district and community college district.
- 44 (p) Every member of the following state boards and commissions:
- 45 (A) Board of Geologic and Mineral Industries.

- 1 (B) Oregon Business Development Commission.
- 2 (C) State Board of Education.
- 3 (D) Environmental Quality Commission.
- 4 (E) Fish and Wildlife Commission of the State of Oregon.
- 5 (F) State Board of Forestry.
- 6 (G) Oregon Government Ethics Commission.
- 7 (H) Oregon Health Policy Board.
- 8 (I) State Board of Higher Education.
- 9 (J) Oregon Investment Council.
- 10 (K) Land Conservation and Development Commission.
- 11 (L) Oregon Liquor Control Commission.
- 12 (M) Oregon Short Term Fund Board.
- 13 (N) State Marine Board.
- 14 (O) Mass transit district boards.
- 15 (P) Energy Facility Siting Council.
- 16 (Q) Board of Commissioners of the Port of Portland.
- 17 (R) Employment Relations Board.
- 18 (S) Public Employees Retirement Board.
- 19 (T) Oregon Racing Commission.
- 20 (U) Oregon Transportation Commission.
- 21 (V) Water Resources Commission.
- 22 (W) Workers' Compensation Board.
- 23 (X) Oregon Facilities Authority.
- 24 (Y) Oregon State Lottery Commission.
- 25 (Z) Pacific Northwest Electric Power and Conservation Planning Council.
- 26 (AA) Columbia River Gorge Commission.
- 27 (BB) Oregon Health and Science University Board of Directors.
- 28 (CC) Capitol Planning Commission.
- 29 (DD) Higher Education Coordinating Commission.
- 30 (EE) Oregon Growth Board.
- 31 (FF) Early Learning Council.
- 32 (q) The following officers of the State Treasurer:
- 33 (A) Deputy State Treasurer.
- 34 (B) Chief of staff for the office of the State Treasurer.
- 35 (C) Director of the Investment Division.
- 36 (r) Every member of the board of commissioners of a port governed by ORS 777.005 to 777.725
- 37 or 777.915 to 777.953.
- 38 (s) Every member of the board of directors of an authority created under ORS 441.525 to 441.595.
- 39 (t) Every member of a governing board of a public university with a governing board listed in
- 40 ORS 352.054.
- 41 **(u) Every member of the board of directors of Infrastructure Innovation Oregon.**
- 42 (2) By April 15 next after the date an appointment takes effect, every appointed public official
- 43 on a board or commission listed in subsection (1) of this section shall file with the Oregon Govern-
- 44 ment Ethics Commission a statement of economic interest as required under ORS 244.060, 244.070
- 45 and 244.090.

1 (3) By April 15 next after the filing deadline for the primary election, each candidate described
 2 in subsection (1) of this section shall file with the commission a statement of economic interest as
 3 required under ORS 244.060, 244.070 and 244.090.

4 (4) Within 30 days after the filing deadline for the general election, each candidate described in
 5 subsection (1) of this section who was not a candidate in the preceding primary election, or who
 6 was nominated for public office described in subsection (1) of this section at the preceding primary
 7 election by write-in votes, shall file with the commission a statement of economic interest as re-
 8 quired under ORS 244.060, 244.070 and 244.090.

9 (5) Subsections (1) to (4) of this section apply only to persons who are incumbent, elected or
 10 appointed public officials as of April 15 and to persons who are candidates on April 15. Subsections
 11 (1) to (4) of this section also apply to persons who do not become candidates until 30 days after the
 12 filing deadline for the statewide general election.

13 (6) If a statement required to be filed under this section has not been received by the commis-
 14 sion within five days after the date the statement is due, the commission shall notify the public of-
 15 ficial or candidate and give the public official or candidate not less than 15 days to comply with the
 16 requirements of this section. If the public official or candidate fails to comply by the date set by the
 17 commission, the commission may impose a civil penalty as provided in ORS 244.350.

18 **SECTION 22.** ORS 192.490 is amended to read:

19 192.490. (1) In any suit filed under ORS 192.450, 192.460, 192.470 or 192.480 **or section 19 of this**
 20 **2014 Act**, the court has jurisdiction to enjoin the public body from withholding records and to order
 21 the production of any records improperly withheld from the person seeking disclosure. The court
 22 shall determine the matter de novo and the burden is on the public body to sustain its action. The
 23 court, on its own motion, may view the documents in controversy in camera before reaching a de-
 24 cision. Any noncompliance with the order of the court may be punished as contempt of court.

25 (2) Except as to causes the court considers of greater importance, proceedings arising under
 26 ORS 192.450, 192.460, 192.470 or 192.480 **or section 19 of this 2014 Act** take precedence on the
 27 docket over all other causes and shall be assigned for hearing and trial at the earliest practicable
 28 date and expedited in every way.

29 (3) If a person seeking the right to inspect or to receive a copy of a public record prevails in
 30 the suit, the person shall be awarded costs and disbursements and reasonable attorney fees at trial
 31 and on appeal. If the person prevails in part, the court may in its discretion award the person costs
 32 and disbursements and reasonable attorney fees at trial and on appeal, or an appropriate portion
 33 thereof. If the state agency failed to comply with the Attorney General's order in full and did not
 34 issue a notice of intention to institute proceedings pursuant to ORS 192.450 (2) within seven days
 35 after issuance of the order, or did not institute the proceedings within seven days after issuance of
 36 the notice, the petitioner shall be awarded costs of suit at the trial level and reasonable attorney
 37 fees regardless of which party instituted the suit and regardless of which party prevailed therein.

38 **SECTION 23. The Legislative Assembly finds that:**

39 (1) **The West Coast Infrastructure Exchange is a resource that will increase the feasi-**
 40 **bility for vital infrastructure projects at a time when existing public facilities need renewal**
 41 **and new investments are imperative to maintain and improve economic competitiveness to**
 42 **support jobs and families.**

43 (2) **Limitations in available financing and the high cost of infrastructure mean new tools**
 44 **are necessary. The West Coast Infrastructure Exchange will help by reducing costs through**
 45 **strong management, bundling similar projects, partnering with innovators in other regions**

1 and helping units of government to connect with private capital. Target infrastructure in-
2 vestment opportunities include, but are not limited to, energy transmission and efficiency,
3 water storage capacity, municipal water systems and wastewater management.

4 (3) The West Coast Infrastructure Exchange also will offer a forum to strengthen ties
5 and help align interests among government, community, investment and nonprofit
6 stakeholders in the western states.

7 SECTION 24. Section 23 of this 2014 Act is repealed on January 2, 2019.

8 SECTION 25. (1) The Governor and State Treasurer shall each name an equal number
9 of appointees to represent Oregon in the West Coast Infrastructure Exchange. One appointee
10 must be a representative of Infrastructure Innovation Oregon.

11 (2) Dues for the State of Oregon's membership in the West Coast Infrastructure Ex-
12 change may not exceed \$_____ each year.

13 SECTION 26. No later than November 15, 2016, Infrastructure Innovation Oregon, in
14 consultation with the West Coast Infrastructure Exchange, shall make a recommendation
15 to an interim committee of the Legislative Assembly related to public infrastructure projects
16 of statutory changes necessary to facilitate a permanent program of innovative public
17 infrastructure procurement in Oregon.

18 SECTION 27. This 2014 Act being necessary for the immediate preservation of the public
19 peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect
20 on its passage.

21 _____