

A-Engrossed
House Bill 2748

Ordered by the House April 24
Including House Amendments dated April 24

Sponsored by Representative READ (Pre-session filed.)

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.

[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.]

Increases membership of Public Infrastructure Commission to 13 by requiring both architect and engineer to be appointed. Changes deadline for submission of report by commission to Legislative Assembly to January 15, 2016.

Substitutes Oregon Department of Administrative Services for State Treasurer for purposes of screening, as required under section 3, chapter 66, Oregon Laws 2014 (Enrolled House Bill 4111), of certain large-capital public infrastructure projects to determine whether projects would benefit from private capital and innovative procurement methods. Extends sunset of Public Infrastructure Commission and department's screening duties to July 31, 2016. Conditions continuation of department's screening duties on appropriation by Legislative Assembly.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to public infrastructure; creating new provisions; amending sections 2, 3 and 5, chapter 66, Oregon Laws 2014; and declaring an emergency.

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

SECTION 1. Section 2, chapter 66, Oregon Laws 2014, is amended to read:

Sec. 2. (1) The Public Infrastructure Commission is established, consisting of [12] **13** members appointed as follows:

(a) The Governor shall appoint six members as follows:

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) One member with significant public infrastructure financing expertise;
- 2 (B) One member with significant expertise in the investment of private capital in public
3 infrastructure;
- 4 (C) One member who is a nationally recognized expert in public-private partnerships;
- 5 (D) One member who represents a city, county, port or special district;
- 6 (E) One member who is an employee of a state contracting agency; and
- 7 (F) One member from a firm licensed as a general contractor in Oregon who has significant
8 executive-level experience in the construction industry working on public projects.
- 9 (b) The President of the Senate and the Speaker of the House of Representatives, by mutual
10 agreement, shall appoint [*six*] **seven** members as follows:
- 11 (A) One member from the Senate and one member from the House of Representatives not of the
12 same party;
- 13 (B) [*One member*] **Two members** representing the professional construction services industry
14 who [*is*] **are** registered in Oregon [*as either*], **one as** an architect [*or*] **and one as an** engineer;
- 15 (C) One member representing an Oregon-licensed contractor that has performed public contracts
16 for mechanical systems for a public agency in this state;
- 17 (D) One member representing a construction trade labor organization; and
- 18 (E) One member representing a maintenance workers' labor organization.
- 19 (2) The Public Infrastructure Commission shall:
- 20 (a) Identify Oregon's public infrastructure funding needs.
- 21 (b) Review and examine the tools now available to close the gap in funding for public
22 infrastructure projects in Oregon.
- 23 (c) Research and evaluate a variety of innovative financing and procurement methods that could
24 be used to deliver public infrastructure projects in Oregon.
- 25 (d) Determine whether there are any legal impediments to innovative financing and procurement
26 methods for public infrastructure projects.
- 27 (e) In furtherance of the commission's duties under paragraphs (a) to (d) of this subsection, re-
28 ceive determinations from the [*State Treasurer*] **Oregon Department of Administrative Services**
29 pursuant to section 3 (3) [*of this 2014 Act*], **chapter 66, Oregon Laws 2014**.
- 30 (3) The commission may consult with experts, hear testimony and otherwise collect data and
31 information necessary to carry out the duties of the commission.
- 32 (4) A majority of the members of the commission constitutes a quorum for the transaction of
33 business.
- 34 (5) Official action by the commission requires the approval of a majority of the members of the
35 commission.
- 36 (6) If there is a vacancy for any cause, the appointing authority shall make an appointment to
37 become immediately effective.
- 38 (7) The commission shall meet at times and places specified by the call of the chair or of a
39 majority of the members of the commission.
- 40 (8) Members of the commission who are members of the Legislative Assembly shall receive
41 compensation and expenses as provided in ORS 171.072.
- 42 (9) The commission may adopt rules necessary for the operation of the commission.
- 43 (10) The commission shall submit a report in the manner provided in ORS 192.245, and may in-
44 clude recommendations for legislation, to an interim committee of the Legislative Assembly related
45 to public infrastructure no later than [*November 21, 2014*] **January 15, 2016**.

1 (11) All agencies of state government, as defined in ORS 174.111, are directed to assist the
2 commission in the performance of its duties and, to the extent permitted by laws relating to
3 confidentiality, to furnish such information and advice as the members of the commission consider
4 necessary to perform their duties.

5 (12) As used in this section, “public infrastructure” has the meaning given that term in section
6 3 [of this 2014 Act], **chapter 66, Oregon Laws 2014.**

7 **SECTION 2.** Section 3, chapter 66, Oregon Laws 2014, is amended to read:

8 **Sec. 3.** (1) As used in this section:

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

11 (A) Facilities to develop sources of, store or deliver clean water;

12 (B) Facilities to capture, treat or dispose of sewage, storm water or wastewater;

13 (C) Facilities for solid waste management, treatment, disposal or conversion;

14 (D) Highways as defined in ORS 366.005;

15 (E) Street lighting or other public safety installations;

16 (F) Passenger or freight rail or streetcar systems or networks;

17 (G) Energy conservation, generation or transmission facilities or improvements;

18 (H) Data transmission facilities or equipment;

19 (I) Schools;

20 (J) Courts or other facilities necessary for the administration of justice; or

21 (K) Improvements to property owned, occupied or operated by any unit of government.

22 (b) “Unit of government” means:

23 (A) Any unit of the state government as defined in ORS 174.111;

24 (B) Any unit of local government as defined in ORS 174.116; or

25 (C) A special government body as defined in ORS 174.117.

26 (2)(a) A unit of government undertaking a public infrastructure project described in paragraph
27 (b) of this subsection must submit a description of the proposed project to the [*State Treasurer*]
28 **Oregon Department of Administrative Services** at an early stage of planning for the project.

29 (b)(A) This section applies to a public infrastructure project with estimated total capital expen-
30 ditures of greater than \$50 million, of which at least \$20 million consists of funds to be awarded
31 directly by a state agency or the Legislative Assembly, or both, to the unit of government specif-
32 ically for the project.

33 (B) The \$20 million of funds described in subparagraph (A) of this paragraph does not include
34 any amounts of state shared revenues or funds received from the federal government and distributed
35 to the unit of government.

36 (3)(a) The [*State Treasurer or a designee*] **Oregon Department of Administrative Services**
37 shall screen the proposed project for the following characteristics to determine whether the project
38 would benefit from private capital and innovative procurement methods:

39 (A) Whether faster procurement and delivery would provide a material benefit;

40 (B) Whether there are legal impediments for any method;

41 (C) The total estimated construction budget;

42 (D) Life-cycle maintenance costs as a percentage of total construction costs;

43 (E) Risks that make transfer of risk to the private sector desirable;

44 (F) Whether the risks, including the monetary value of the transfer of the risks, can be ade-
45 quately analyzed and efficiently priced;

1 (G) The replacement and maintenance of equipment, structure and systems contemplated over
2 the term of the project agreements;

3 (H) Whether the project specifications for output and performance are developed enough to
4 create enforceable contracts;

5 (I) Whether the unit of government will remain in ownership and control of the infrastructure;
6 and

7 (J) Whether an alternative method of contracting would increase the value of the project for the
8 public.

9 (b) The information necessary for the determination under paragraph (a) of this subsection may
10 be obtained from industry standards and data for the applicable asset class of the proposed project,
11 project historical data and the project owner's studies and reports about the proposed project that
12 are available at the time the screening is made under this section. The [State Treasurer] **Oregon**
13 **Department of Administrative Services** may not require a project owner to create new technical
14 data for the purposes of this section.

15 (c) The [State Treasurer] **Oregon Department of Administrative Services** shall:

16 (A) Complete the screening within 30 days after receiving from the unit of government the de-
17 scription of the project, including sufficient information for the determination under paragraph (a)
18 of this subsection.

19 (B) Submit a copy of the determination to the Public Infrastructure Commission established un-
20 der section 2, **chapter 66, Oregon Laws 2014** [of this 2014 Act].

21 (4) This section does not apply to a public infrastructure project:

22 (a) Undertaken by a unit of government in response to a public health or safety emergency;

23 (b) That has been screened for the characteristics described in subsection (3)(a) of this section
24 by the Oregon Department of Administrative Services or Partnerships British Columbia before [the
25 effective date of this 2014 Act] **March 13, 2014**; or

26 (c) If the unit of government applied for or committed any of the \$20 million of funds described
27 in subsection (2)(b) of this section before [the effective date of this 2014 Act] **March 13, 2014**.

28 **SECTION 3.** Section 5, chapter 66, Oregon Laws 2014, is amended to read:

29 **Sec. 5.** Sections 1, 2 and 3 [of this 2014 Act], **chapter 66, Oregon Laws 2014**, are repealed on
30 [January 2] **July 31, 2016**.

31 **SECTION 4.** Section 3, chapter 66, Oregon Laws 2014, shall remain operative after Janu-
32 ary 2, 2016, and until the date specified in section 5, chapter 66, Oregon Laws 2014, only if
33 the Legislative Assembly appropriates sufficient moneys to the Oregon Department of Ad-
34 ministrative Services to administer section 3, chapter 66, Oregon Laws 2014.

35 **SECTION 5.** (1) The State Treasurer shall deliver to the Oregon Department of Admin-
36 istrative Services all records and property that relate to the duties, functions and powers
37 transferred by the amendments to section 3, chapter 66, Oregon Laws 2014, by section 2 of
38 this 2015 Act.

39 (2) Any moneys appropriated for purposes of section 3, chapter 66, Oregon Laws 2014,
40 including moneys appropriated under section 81, chapter 118, Oregon Laws 2014, are available
41 for expenditure by the department.

42 **SECTION 6.** This 2015 Act being necessary for the immediate preservation of the public
43 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
44 on its passage.