

Enrolled Senate Bill 225

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CHAPTER

AN ACT

Relating to bonding; amending ORS 286A.035, 286A.118, 286A.130 and 286A.615; and declaring an emergency.

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

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

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

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

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

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

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

(4) The Legislative Assembly shall determine the amount of bonds the State Treasurer may issue for each state agency for a biennium. **Except as provided in subsection (5) of this section**, if the Legislative Assembly fails to make the determination described in this subsection by the first day of the biennium, the unused portion of the authorization the Legislative Assembly made for the preceding biennium is deemed to carry forward for the current biennium at the amount authorized for the preceding biennium until the earlier of:

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

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

(5) The unused portion of the amount of pass-through revenue bonds authorized for issuance in the preceding biennium is deemed to carry forward for the current biennium until the date on which legislation authorizing the amount of pass-through revenue bonds for the current biennium is enacted.

[(5)] (6) The amount of bonds that may be issued under bond programs may be modified by the Governor. However, the Governor may not modify the amount of bonds that may be issued under bond programs in a way that would cause the maximum amount established by the Legislative Assembly for a category of bond programs to be exceeded if the Legislative Assembly:

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

(b) Assigned a maximum amount to each category.

[(6)] (7) This section applies to bonds:

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

(b) Except refunding bonds.

SECTION 2. ORS 286A.615 is amended to read:

286A.615. (1) The Private Activity Bond Committee is established. It shall consist of the State Treasurer or the designee of the State Treasurer, one representative from the Oregon Department of Administrative Services and one public representative appointed to serve at the pleasure of the Governor.

(2) The State Treasurer, or the State Treasurer's designee, shall serve as chair of the committee.

(3) The purpose of private activity bonding in this state is to maximize the economic benefits of private activity bonding to the citizens of this state. The committee shall adopt by rule standards for amounts allocated to the committee for further allocation for economic development, housing, education, redevelopment, public works, energy, waste management, waste and recycling collection, transportation and other activities that the committee determines will benefit the citizens of this state. In developing standards, the committee shall:

(a) Survey the expected need for private activity bond allocations at least once each year;

(b) Develop strategies for reserving and allocating the limit that are designed to maximize the availability of tax exempt financing among competing sectors of the Oregon economy; and

(c) Ensure that the standards include but are not limited to standards that:

(A) Support projects that increase the number of family wage jobs in this state.

(B) Promote economic recovery in small cities heavily dependent on a single industry.

(C) Emphasize development in underdeveloped rural areas of this state.

(D) Utilize educational resources available at public universities listed in ORS 352.002.

(E) Support development of the state's small businesses, especially minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses, as those terms are defined in ORS 200.005.

(F) Encourage use of Oregon's human and natural resources in endeavors that harness Oregon's economic comparative advantages.

(4) The state private activity bond volume cap allocated to the Private Activity Bond Committee as provided in ORS 286A.620 shall be allocated and reallocated among issuers by the Private Activity Bond Committee as follows:

(a) Any amounts not reserved to an issuer or a class of issuers under the authorization adopted by the Legislative Assembly under ORS 286A.035 shall be allocated or reallocated by the committee under rules adopted under subsection (3) of this section.

(b) Any amounts provided for in the authorization adopted by the Legislative Assembly under ORS 286A.035 that are unused shall be carried forward for use as provided by rules adopted under subsection (3) of this section.

(c) The rules adopted by the committee shall limit the period of time for which an allocation of private activity bonding authority is effective. The rules shall ensure that allocations made during a calendar year are used during that calendar year or that the unused amount of the allocation is reallocated or carried forward.

[(5) *Unused allocations are not transferable among issuers but are available for reallocation.*]

(5) Amounts allocated to a state agency on behalf of which the State Treasurer may issue bonds may be suballocated by the state agency, at the state agency's discretion, through an

assignment of the allocation to another issuer, provided that the issuer receiving the assignment shall:

(a) Use the allocation for the same category of private activity bond projects for which the allocation was made;

(b) Use the allocation during the calendar year for which the allocation was made; and

(c) Otherwise comply with any terms and conditions imposed in connection with the allocation by the committee or the Legislative Assembly or by rule of the state agency making the assignment.

SECTION 3. ORS 286A.118 is amended to read:

286A.118. With the approval of the State Treasurer, a related agency may lend moneys derived from an issuance and sale of bonds to a [conduit] **pass-through revenue bond** borrower of proceeds from outstanding, previously issued [conduit] **pass-through** revenue bonds for the purpose of paying a termination payment due under an agreement for exchange of interest rates entered into by the [conduit] **pass-through revenue bond** borrower in relation to the outstanding, previously issued [conduit] **pass-through** revenue bonds.

SECTION 4. ORS 286A.130 is amended to read:

286A.130. (1) The State Treasurer or a related agency may enter into one or more agreements for bond counsel services for a period of not less than one year during any biennium in which there are bonds outstanding that were issued for the state agency or during any biennium in which the state agency expects the State Treasurer to issue bonds for an agency program. A state agency may not enter into an agreement for bond counsel services unless the State Treasurer and the Attorney General have reviewed and approved the terms and conditions of the agreement. Before approving an agreement, the State Treasurer shall consider the reputation, experience and credentials of the bond counsel, including the individuals expected to actually fulfill the contract work.

(2) Except as provided in subsection (3) of this section, the appointment of bond counsel may not be construed as authorizing bond counsel to advise or represent the state on matters that are committed by statute to the Attorney General.

(3) The services provided under a bond counsel agreement may include:

(a) Advising a state agency or the State Treasurer concerning the legality of specific proposed taxable or tax-exempt bonds and the compliance of obligations with applicable law, including but not limited to federal securities and tax laws;

(b) Issuing opinions to a state agency, the State Treasurer or other parties concerning the enforceability of, authority for and tax status of bonds, agreements for exchange of interest rates, credit enhancement devices or similar associated documents and on the lawful use of the proceeds of the bonds, as may be required by the demands of the marketplace for the bonds;

(c) Advising a state agency or the State Treasurer on legal procedures and practices in the bond marketplace, including advice on the structuring and sale of bonds;

(d) Preparing or assisting in the preparation of documents related to a specific issue of bonds, including but not limited to an authorizing resolution or declaration, a trust indenture, a prospectus, a preliminary official statement, an official statement, a bond sale notice, a bond form, a bid form, a bond purchase agreement, an agreement for exchange of interest rates, a credit enhancement device or a similar document necessary or desirable to sell bonds;

(e) Advising a state agency or the State Treasurer concerning the maintenance of the tax status of specific bonds, compliance with any requirements for representations or disclosures relating to the bonds, compliance with any documents executed as part of the issuance of the bonds and federal laws related to bond programs that may be available to a state agency;

(f) Advising a state agency or the State Treasurer concerning accounting, investment or administrative procedures recommended or required for compliance with federal or state securities or tax or rebate requirements relating to bonds that were issued for the agency or that the agency expects to issue; and

(g) Advising and assisting a state agency or the State Treasurer in responding to an inquiry received from or an audit by a federal or state regulatory body concerning:

- (A) The tax status of interest paid on the bonds;
- (B) The marketing of the bonds;
- (C) Requirements of federal law related to the use of bond proceeds or the program for which the bonds were issued; or
- (D) Other matters within the jurisdiction of the federal or state regulatory body relating to bonds that were issued by the state agency.

(4) In addition to entering into an agreement described in subsection (3) of this section, the State Treasurer or a related agency may appoint bond counsel by letter, certificate or otherwise, to provide the services described in subsection (3) of this section for an individual [conduit] **pass-through** revenue bond sale.

(5) The State Treasurer or, with the approval of the State Treasurer, a related agency may enter into an agreement with and retain the services of one or more providers of financial advisory services. When considering whether to enter into or approve an agreement with a provider of financial advisory services, before approving the agreement, the State Treasurer shall consider the reputation, experience and credentials of the adviser, including the individuals expected to actually fulfill the contract work.

(6) Except for the expenses of bond counsel services provided under subsection (4) of this section for [conduit] **pass-through** revenue bond sales, the related agency shall pay the expenses of any agreements entered into under this section and may use bond proceeds to pay those expenses.

(7) The Public Contracting Code does not apply to agreements entered into under this section.

SECTION 5. This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on its passage.

Passed by Senate April 13, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House May 25, 2023

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Dan Rayfield, Speaker of House

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

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Secretary of State