

LC 555  
2023 Regular Session  
91400-004  
9/21/22 (DFY/ps)

# D R A F T

## SUMMARY

Provides that unused portion of amount of pass-through revenue bonds authorized for issuance in preceding biennium carries forward until legislation authorizing amount of pass-through revenue bonds for current biennium is enacted.

Provides that entity that is authorized to issue private activity bonds may suballocate its private activity bond allocation to other issuers.

Adjusts terminology relating to conduit revenue bonds.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to bonding; amending ORS 286A.035, 286A.118, 286A.130 and  
3 286A.615; and declaring an emergency.

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

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

6 286A.035. (1) Each related agency shall report the plans of the related  
7 agency for the issuance of bonds during the next biennium. The related  
8 agency shall submit the related agency's report to the Governor by a date  
9 determined by the Governor and shall include in the report a description of  
10 bonds that the related agency intends to retire or defease during the next  
11 biennium.

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

16 (3) As part of the Governor's budget described in ORS 291.216, the Gov-

**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 error shall:

2 (a) Consider the prudent maximum amounts advised by the State Treas-  
3 urer pursuant to subsection (2) of this section to determine the Governor's  
4 total recommended amount; and

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

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

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

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

18 **(5) The unused portion of the amount of pass-through revenue**  
19 **bonds authorized for issuance in the preceding biennium is deemed to**  
20 **carry forward for the current biennium until the date on which legis-**  
21 **lation authorizing the amount of pass-through revenue bonds for the**  
22 **current biennium is enacted.**

23 [(5)] **(6)** The amount of bonds that may be issued under bond programs  
24 may be modified by the Governor. However, the Governor may not modify  
25 the amount of bonds that may be issued under bond programs in a way that  
26 would cause the maximum amount established by the Legislative Assembly  
27 for a category of bond programs to be exceeded if the Legislative Assembly:

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

30 (b) Assigned a maximum amount to each category.

31 [(6)] **(7)** This section applies to bonds:

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

3 (b) Except refunding bonds.

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

5 286A.615. (1) The Private Activity Bond Committee is established. It shall  
6 consist of the State Treasurer or the designee of the State Treasurer, one  
7 representative from the Oregon Department of Administrative Services and  
8 one public representative appointed to serve at the pleasure of the Governor.

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

11 (3) The purpose of private activity bonding in this state is to maximize  
12 the economic benefits of private activity bonding to the citizens of this state.  
13 The committee shall adopt by rule standards for amounts allocated to the  
14 committee for further allocation for economic development, housing, educa-  
15 tion, redevelopment, public works, energy, waste management, waste and re-  
16 cycling collection, transportation and other activities that the committee  
17 determines will benefit the citizens of this state. In developing standards, the  
18 committee shall:

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

21 (b) Develop strategies for reserving and allocating the limit that are de-  
22 signed to maximize the availability of tax exempt financing among competing  
23 sectors of the Oregon economy; and

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

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

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

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

31 (D) Utilize educational resources available at public universities listed in

1 ORS 352.002.

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

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

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

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

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

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

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

26 **(5) Amounts allocated to an issuer by the committee may be sub-**  
27 **allocated by the issuer, at the issuer's discretion, through an assign-**  
28 **ment of the allocation to another issuer, provided that the issuer**  
29 **receiving the assignment shall:**

30 **(a) Use the allocation for the same category of private activity bond**  
31 **projects for which the allocation was made by the committee;**

1 (b) Use the allocation during the calendar year in which the allo-  
2 cation was made by the committee; and

3 (c) Otherwise comply with any terms and conditions imposed by the  
4 committee in connection with the allocation.

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

6 286A.118. With the approval of the State Treasurer, a related agency may  
7 lend moneys derived from an issuance and sale of bonds to a [*conduit*]  
8 **pass-through revenue bond** borrower of proceeds from outstanding, previ-  
9 ously issued [*conduit*] **pass-through** revenue bonds for the purpose of paying  
10 a termination payment due under an agreement for exchange of interest rates  
11 entered into by the [*conduit*] **pass-through revenue bond** borrower in re-  
12 lation to the outstanding, previously issued [*conduit*] **pass-through** revenue  
13 bonds.

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

15 286A.130. (1) The State Treasurer or a related agency may enter into one  
16 or more agreements for bond counsel services for a period of not less than  
17 one year during any biennium in which there are bonds outstanding that  
18 were issued for the state agency or during any biennium in which the state  
19 agency expects the State Treasurer to issue bonds for an agency program.  
20 A state agency may not enter into an agreement for bond counsel services  
21 unless the State Treasurer and the Attorney General have reviewed and ap-  
22 proved the terms and conditions of the agreement. Before approving an  
23 agreement, the State Treasurer shall consider the reputation, experience and  
24 credentials of the bond counsel, including the individuals expected to actu-  
25 ally fulfill the contract work.

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

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

31 (a) Advising a state agency or the State Treasurer concerning the legality

1 of specific proposed taxable or tax-exempt bonds and the compliance of obli-  
2 gations with applicable law, including but not limited to federal securities  
3 and tax laws;

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

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

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

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

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

29 (g) Advising and assisting a state agency or the State Treasurer in re-  
30 sponding to an inquiry received from or an audit by a federal or state regu-  
31 latory body concerning:

1 (A) The tax status of interest paid on the bonds;  
2 (B) The marketing of the bonds;

3 (C) Requirements of federal law related to the use of bond proceeds or the  
4 program for which the bonds were issued; or

5 (D) Other matters within the jurisdiction of the federal or state regula-  
6 tory body relating to bonds that were issued by the state agency.

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

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

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

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

25 **SECTION 5. This 2023 Act being necessary for the immediate pres-**  
26 **ervation of the public peace, health and safety, an emergency is de-**  
27 **clared to exist, and this 2023 Act takes effect on its passage.**

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