

Enrolled 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)

CHAPTER

AN ACT

Relating to public infrastructure; and declaring an emergency.

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

SECTION 1. The Legislative Assembly finds that:

(1) Public infrastructure is essential to a vibrant economy and to healthy communities in Oregon.

(2) There is widespread agreement that Oregon’s need for adequate and well performing public infrastructure is growing but that traditional sources of funding for public infrastructure may not meet that need.

(3) Oregon needs to test and evaluate a variety of methods of financing and procuring public infrastructure projects to ensure the highest level of transparency, accountability and consistency in those projects.

(4) It is necessary to identify barriers to the use of private capital in financing public infrastructure projects in Oregon.

(5) Public-private partnerships, in numerous forms, might be used to supplement traditional methods of financing and procuring public infrastructure projects.

(6) There is a broad lack of understanding and knowledge of the complex business arrangements typical of many forms of public-private partnerships.

(7) The Public Infrastructure Commission is established for the purposes of increasing capacity for public infrastructure projects in Oregon and taking advantage of opportunities for regional public infrastructure development.

SECTION 2. (1) The Public Infrastructure Commission is established, consisting of 12 members appointed as follows:

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

(A) One member with significant public infrastructure financing expertise;

(B) One member with significant expertise in the investment of private capital in public infrastructure;

(C) One member who is a nationally recognized expert in public-private partnerships;

(D) One member who represents a city, county, port or special district;

(E) One member who is an employee of a state contracting agency; and

(F) One member from a firm licensed as a general contractor in Oregon who has significant executive-level experience in the construction industry working on public projects.

(b) The President of the Senate and the Speaker of the House of Representatives, by mutual agreement, shall appoint six members as follows:

(A) One member from the Senate and one member from the House of Representatives not of the same party;

(B) One member representing the professional construction services industry who is registered in Oregon as either an architect or engineer;

(C) One member representing an Oregon-licensed contractor that has performed public contracts for mechanical systems for a public agency in this state;

(D) One member representing a construction trade labor organization; and

(E) One member representing a maintenance workers' labor organization.

(2) The Public Infrastructure Commission shall:

(a) Identify Oregon's public infrastructure funding needs.

(b) Review and examine the tools now available to close the gap in funding for public infrastructure projects in Oregon.

(c) Research and evaluate a variety of innovative financing and procurement methods that could be used to deliver public infrastructure projects in Oregon.

(d) Determine whether there are any legal impediments to innovative financing and procurement methods for public infrastructure projects.

(e) In furtherance of the commission's duties under paragraphs (a) to (d) of this subsection, receive determinations from the State Treasurer pursuant to section 3 (3) of this 2014 Act.

(3) The commission may consult with experts, hear testimony and otherwise collect data and information necessary to carry out the duties of the commission.

(4) A majority of the members of the commission constitutes a quorum for the transaction of business.

(5) Official action by the commission requires the approval of a majority of the members of the commission.

(6) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

(7) The commission shall meet at times and places specified by the call of the chair or of a majority of the members of the commission.

(8) Members of the commission who are members of the Legislative Assembly shall receive compensation and expenses as provided in ORS 171.072.

(9) The commission may adopt rules necessary for the operation of the commission.

(10) The commission shall submit a report in the manner provided in ORS 192.245, and may include recommendations for legislation, to an interim committee of the Legislative Assembly related to public infrastructure no later than November 21, 2014.

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

(12) As used in this section, "public infrastructure" has the meaning given that term in section 3 of this 2014 Act.

SECTION 3. (1) As used in this section:

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

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

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

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

(D) Highways as defined in ORS 366.005;

(E) Street lighting or other public safety installations;

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

- (G) Energy conservation, generation or transmission facilities or improvements;
- (H) Data transmission facilities or equipment;
- (I) Schools;
- (J) Courts or other facilities necessary for the administration of justice; or
- (K) Improvements to property owned, occupied or operated by any unit of government.

(b) "Unit of government" means:

- (A) Any unit of the state government as defined in ORS 174.111;
- (B) Any unit of local government as defined in ORS 174.116; or
- (C) A special government body as defined in ORS 174.117.

(2)(a) A unit of government undertaking a public infrastructure project described in paragraph (b) of this subsection must submit a description of the proposed project to the State Treasurer at an early stage of planning for the project.

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

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

(3)(a) The State Treasurer or a designee shall screen the proposed project for the following characteristics to determine whether the project would benefit from private capital and innovative procurement methods:

- (A) Whether faster procurement and delivery would provide a material benefit;
- (B) Whether there are legal impediments for any method;
- (C) The total estimated construction budget;
- (D) Life-cycle maintenance costs as a percentage of total construction costs;
- (E) Risks that make transfer of risk to the private sector desirable;
- (F) Whether the risks, including the monetary value of the transfer of the risks, can be adequately analyzed and efficiently priced;

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

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

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

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

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

(c) The State Treasurer shall:

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

(B) Submit a copy of the determination to the Public Infrastructure Commission established under section 2 of this 2014 Act.

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

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

(b) That has been screened for the characteristics described in subsection (3)(a) of this section by the Oregon Department of Administrative Services or Partnerships British Columbia before the effective date of this 2014 Act; or

(c) If the unit of government applied for or committed any of the \$20 million of funds described in subsection (2)(b) of this section before the effective date of this 2014 Act.

SECTION 4. (1) Section 3 of this 2014 Act becomes operative only if the Legislative Assembly appropriates sufficient moneys to the State Treasurer, other than moneys described in ORS 293.718, to administer section 3 of this 2014 Act.

(2) Any costs incurred by the State Treasurer in administering section 3 of this 2014 Act may not be paid from investment funds as defined in ORS 293.701.

SECTION 5. Sections 1, 2 and 3 of this 2014 Act are repealed on January 2, 2016.

SECTION 6. The Legislative Assembly finds that:

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

(2) Limitations in available financing and the high cost of infrastructure mean new tools are necessary. The West Coast Infrastructure Exchange will help by reducing costs through strong management, partnering with innovators in other regions and helping units of government to connect with private capital. Target infrastructure investment opportunities include, but are not limited to, energy transmission and efficiency, water storage capacity, municipal water systems and wastewater management.

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

SECTION 7. Section 6 of this 2014 Act is repealed on January 2, 2019.

SECTION 8. The Governor and State Treasurer shall each name an equal number of appointees to represent Oregon in the West Coast Infrastructure Exchange.

SECTION 9. This 2014 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect on its passage.

Passed by House February 14, 2014

Repassed by House February 26, 2014

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate February 25, 2014

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2014

Approved:

.....M,....., 2014

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2014

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Kate Brown, Secretary of State