

A-Engrossed House Bill 4111

Ordered by the House February 14
Including House Amendments dated February 14

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.

[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.]

Establishes Public Infrastructure Commission to identify Oregon's public infrastructure funding needs and to research and analyze financing and procurement methods for public infrastructure projects. Requires commission to submit report, which may include recommendations for legislation, to Legislative Assembly no later than November 21, 2014.

Requires units of government *[intending to undertake]* **undertaking** 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.]* **State Treasurer for screening. Directs State Treasurer to screen projects for certain characteristics to determine whether projects would benefit from private capital and innovative procurement methods. Requires State Treasurer to complete screenings within 30 days after receipt of project descriptions and to submit copy of determinations to Public Infrastructure Commission for use in commission's research and analysis. Conditions State Treasurer's screening duties on appropriation by Legislative Assembly.**

[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; and declaring an emergency.

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

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

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

7 (2) **There is widespread agreement that Oregon's need for adequate and well performing**

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 public infrastructure is growing but that traditional sources of funding for public
2 infrastructure may not meet that need.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (2) The Public Infrastructure Commission shall:

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

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

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

42 (d) Determine whether there are any legal impediments to innovative financing and pro-
43 curement methods for public infrastructure projects.

44 (e) In furtherance of the commission's duties under paragraphs (a) to (d) of this sub-
45 section, receive determinations from the State Treasurer pursuant to section 3 (3) of this

1 **2014 Act.**

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

4 (4) **A majority of the members of the commission constitutes a quorum for the trans-**
5 **action of business.**

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

8 (6) **If there is a vacancy for any cause, the appointing authority shall make an appoint-**
9 **ment to become immediately effective.**

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

12 (8) **Members of the commission who are members of the Legislative Assembly shall re-**
13 **ceive compensation and expenses as provided in ORS 171.072.**

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

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

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

22 (12) **As used in this section, “public infrastructure” has the meaning given that term in**
23 **section 3 of this 2014 Act.**

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

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

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

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

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

30 (D) **Highways as defined in ORS 366.005;**

31 (E) **Street lighting or other public safety installations;**

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

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

34 (H) **Data transmission facilities or equipment;**

35 (I) **Schools;**

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

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

38 (b) **“Unit of government” means:**

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

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

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

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

45 (b)(A) **This section applies to a public infrastructure project with estimated total capital**

1 expenditures of greater than \$50 million, of which at least \$20 million consists of funds to
2 be awarded directly by a state agency or the Legislative Assembly, or both, to the unit of
3 government specifically for the project.

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

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

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

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

12 (C) The total estimated construction budget;

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

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

15 (F) Whether the risks, including the monetary value of the transfer of the risks, can be
16 adequately analyzed and efficiently priced;

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

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

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

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

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

31 (c) The State Treasurer shall:

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

35 (B) Submit a copy of the determination to the Public Infrastructure Commission estab-
36 lished under section 2 of this 2014 Act.

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

38 (a) Undertaken by a unit of government in response to a public health or safety emer-
39 gency;

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

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

45 **SECTION 4.** (1) Section 3 of this 2014 Act becomes operative only if the Legislative As-

1 **sembly appropriates sufficient moneys to the State Treasurer, other than moneys described**
2 **in ORS 293.718, to administer section 3 of this 2014 Act.**

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

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

6 **SECTION 6. The Legislative Assembly finds that:**

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

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

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

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

21 **SECTION 8. The Governor and State Treasurer shall each name an equal number of ap-**
22 **pointees to represent Oregon in the West Coast Infrastructure Exchange.**

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