Chapter 367

2003 EDITION

Transportation Financing; Projects

TRANSPORTATION FINANCING; PROJECTS

(Generally)

367.010 Definitions for chapter

367.015 Oregon Transportation Infrastructure Fund; sources; uses; rules; investment

367.020 Loans and other assistance to public and private entities; rules; other authorized purposes

367.025 Issuance of infrastructure bonds; bond counsel

367.030 Issuance of revenue bonds; bond covenants; maximum amount of bonds

367.035 Loans to municipalities; authority of municipalities; repayment plan

367.040 Loans to state agencies; loan contract

367.050 Powers of department

367.060 Department pledge to ensure loan guarantees; transfer of moneys from State Highway Fund

(Short Line Railroads)

367.066 Definitions for ORS 367.066 and 367.067

367.067 Short Line Credit Premium Account

Note Lottery bonds for short line railroads--2001 c.942 §14

(Industrial Rail Spurs)

367.070 Industrial Rail Spur Fund

SHORT-TERM DEBT

367.105 Short-term borrowing; conditions; repayment

GRANT ANTICIPATION REVENUE BONDS

367.161 Definitions for ORS 367.161 to 367.181

367.163 Purposes for which bonds may be issued

367.166 Requirements for grant anticipation revenue bonds; authority of State Treasurer

367.168 Revenue declaration

367.171 Indenture

367.173 Moneys that may be used for payment of grant anticipation revenue bonds

367.176 Refunding grant anticipation revenue bonds

367.178 Collection and use of federal transportation funds

367.181 Limits on obligation of grant anticipation revenue bonds

BONDED INDEBTEDNESS FOR STATE HIGHWAYS

367.555 Authority to issue general obligation bonds

367.560 Disposition and use of general obligation bond proceeds

367.565 Procedure for issuing general obligation bonds under ORS 367.555 to 367.600

367.595 Setting aside sufficient moneys to pay maturing obligations

367.600 Constitutional debt limits not to be exceeded

HIGHWAY USER TAX BONDS

367.605 Source of funds to secure Highway User Tax Bonds

367.615 Authority for bond issuance; bonds not general obligation; conditions for issuance of additional bonds; use of bond proceeds

367.620 Limitation on bond amount

367.621 Use of private sector resources in specified work

367.622 Preservation and modernization projects to be funded by specified bonds; rules; selection criteria

367.623 Consultation with local governments for project selection

367.630 Highway revenue declaration; contents; purpose

367.635 Bond form; sale; price; maturity; provisions subject to determination of State Treasurer

367.640 Indenture; provisions

367.645 Reserve account

367.650 Trust indenture to secure bonds; provisions

367.655 Loan of bond proceeds to cities and counties; use of loans; rules

367.660 Lien on certain moneys pledged for bonds; terms of lien

367.665 Interest on bonds exempt from state income tax

367.670 Refunding bonds

BONDED INDEBTEDNESS FOR CITY AND COUNTY ROADS AND RECREATION FACILITIES

367.700 Authority to sell limited amount of bonds under ORS 367.700 to 367.750

367.705 Use of funds; priority

367.710 Repayment by city or county; interest

367.715 Procedure for issuing bonds under ORS 367.700 to 367.750

367.745 Setting aside sufficient moneys to pay maturing bonds

367.750 Constitutional debt limits not to be exceeded

OREGON INNOVATIVE PARTNERSHIPS PROGRAM

367.800 Findings

367.802 Definitions

367.804 Goals of Oregon Innovative Partnerships Program; authority of Department of Transportation; confidentiality; expenses

367.806 Agreements

367.808 **Evaluation of proposed agreements; role of Attorney General**

367.810 **State Transportation Enterprise Fund**

367.812 **Bonds secured by State Transportation Enterprise Fund; financing of transportation projects**

367.814 **Moneys from federal government or other sources**

367.816 **Use of moneys in Oregon Transportation Infrastructure Fund for projects**

367.818 **Eminent domain powers**

367.820 **Creation of district; use of revenues within district**

367.822 **Advisory committees on transportation projects; rules**

367.824 **Rules; supremacy of federal law**

367.826 **Reports to Emergency Board**

Note: The definitions in 366.005 and 366.015 apply to this chapter.

FINANCING FOR TRANSPORTATION PROJECTS

(Generally)

367.010 Definitions for chapter. As used in this chapter:

(1) "Agency" means any department, agency or commission of the State of Oregon.

(2) "Bond" means an evidence of indebtedness including, but not limited to, a bond, a note, an obligation, a loan agreement, a financing lease, a financing agreement or other similar instrument or agreement.

(3) "Bond debt service" means payment of:

(a) Principal, interest, premium, if any, or purchase price of a bond;

(b) Amounts due to a credit enhancement provider authorized by this chapter;

(c) Amounts necessary to fund bond debt service reserves; and

(d) Amounts due under an agreement for exchange of interest rates if designated by the State Treasurer or the Department of Transportation.

(4) "Credit enhancement" means a letter of credit, line of credit, bond insurance policy, standby purchase agreement, surety bond or other device or facility used to enhance the creditworthiness, liquidity or marketability of a bond.

(5) "Financial institution" means a banking institution, a financial institution or a non-Oregon institution, as those terms are defined in ORS 706.008, and any other institution defined by rule of the Oregon Transportation Commission as a financial institution for purposes of ORS 367.010 to 367.067.

(6) "Infrastructure assistance" means any use of moneys in the Oregon Transportation Infrastructure Fund, other than an infrastructure loan, to provide financial assistance for transportation projects. The term includes, but is not limited to, use of moneys in the infrastructure fund to finance leases, fund reserves, make grants, pay issuance costs or provide credit enhancement or other security for bonds issued by a public entity to finance transportation projects.

(7) "Infrastructure bonds" means bonds authorized by ORS 367.030, 367.555 to 367.600 or 367.605 to 367.670 that are issued to fund infrastructure loans and the proceeds of which are deposited in the infrastructure fund.

(8) "Infrastructure fund" means the Oregon Transportation Infrastructure Fund.

(9) "Infrastructure loan" means a loan of moneys in the infrastructure fund to finance a transportation project.

(10) "Municipality" means a city, county, road district, school district, special district, metropolitan service district, the Port of Portland or an intergovernmental entity organized under ORS 190.010.

(11) "Transportation project" means any project or undertaking that facilitates any mode of transportation within this state. The term includes, but is not limited to, a project for highway, transit, rail and aviation capital infrastructure, bicycle and pedestrian paths, bridges and ways, and other projects that facilitate the transportation of materials, animals or people. [1997 c.679 §1; 1999 c.1036 §3; 2003 c.201 §11]

367.015 Oregon Transportation Infrastructure Fund; sources; uses; rules; investment. (1) There is established in the State Treasury, separate and distinct from the General Fund, the Oregon Transportation Infrastructure Fund. All moneys in the infrastructure fund are continuously appropriated to the Department of Transportation for the purposes of ORS 367.010 to 367.067.

(2) The infrastructure fund consists of:

(a) Moneys appropriated to the infrastructure fund by the Legislative Assembly.

(b) Moneys transferred to the infrastructure fund by the department from the State Highway Fund or from other funds available to the Oregon Transportation Commission.

(c) Moneys from any federal grant, state grant or other grant that are deposited in the infrastructure fund.

(d) Proceeds of infrastructure bonds.

(e) Proceeds of Highway User Tax Bonds issued under ORS 367.615 and 367.670 for the purpose of providing infrastructure assistance or an infrastructure loan.

(f) Moneys due to a municipality that are withheld pursuant to ORS 367.035 (3) or (5) and, for a loan made with proceeds of Highway User Tax Bonds, moneys due to a municipality that are withheld pursuant to ORS 367.655 (2)(c).

(g) Earnings on the infrastructure fund.

(h) Moneys paid to the department in connection with infrastructure loans or infrastructure assistance.

(i) Any grants or donations made to the State of Oregon for deposit in the infrastructure fund.

(3) A pledge by the department of its revenues or other moneys in the infrastructure fund is valid and binding from the time the pledge is made as provided in ORS 288.594.

(4) The department shall use moneys in the infrastructure fund solely to:

(a) Provide infrastructure loans and infrastructure assistance;

(b) Pay the bond debt service for infrastructure bonds and pay the costs of issuance and other costs related to infrastructure bonds;

(c) Pay the department's costs of administering the infrastructure fund and providing infrastructure loans and infrastructure assistance, including any costs of monitoring transportation projects and obtaining repayment of infrastructure loans and infrastructure assistance;

(d) Pay the department's or another public entity's costs for transportation projects including, but not limited to, projects funded with the proceeds of Highway User Tax Bonds; and

(e) Ensure repayment of loan guarantees or extensions of credit as provided in ORS 367.816.

(5) The department may establish separate accounts in the infrastructure fund for infrastructure loans, infrastructure assistance, the funding of infrastructure bond reserves, bond debt service payments for infrastructure bonds and related costs, administrative and operating expenses or any other purpose necessary or desirable for carrying out the purposes of ORS 367.010 to 367.067. The commission may adopt rules that govern how the infrastructure fund and its accounts are used. The infrastructure fund or any of its accounts may be held by an escrow agent or bond trustee.

(6) The department shall administer the infrastructure fund. Moneys in the infrastructure fund, with the approval of the State Treasurer, may be invested as provided by ORS 293.701 to 293.820 and the earnings from such investments must be credited to the account in the infrastructure fund designated by the department. [1997 c.679 §2; 2003 c.201 §12; 2003 c.790 §14]

367.020 Loans and other assistance to public and private entities; rules; other authorized purposes. (1) Moneys in the Oregon Transportation Infrastructure Fund may be used to make infrastructure loans and provide infrastructure assistance to any public or private entity. The Oregon Transportation Commission shall adopt rules that prescribe procedures and standards for making infrastructure loans and providing infrastructure assistance.

(2) Moneys in the infrastructure fund may be used for any purpose as long as the use is consistent with any restrictions of the Oregon Constitution that may apply to such moneys. [1997 c.679 §§3,4; 2003 c.201 §13]

367.025 Issuance of infrastructure bonds; bond counsel. (1) If the Department of Transportation determines that it is necessary or desirable to issue infrastructure bonds to provide moneys for the Oregon Transportation Infrastructure Fund, the department shall ask the State Treasurer to issue infrastructure bonds.

(2) When the department asks the State Treasurer to issue infrastructure bonds, if the State Treasurer determines that infrastructure bonds shall be issued:

(a) The State Treasurer may authorize and issue infrastructure bonds to provide moneys for the infrastructure fund.

(b) The State Treasurer may enter into agreements with bond underwriters, trustees, financial advisers and other persons to carry out ORS 367.010 to 367.067. The department may appoint bond counsel as authorized by ORS 288.523, or the State Treasurer may enter into an agreement with bond counsel if the services provided under the agreement comply with the provisions of ORS 288.523 and the appointment is approved by the Attorney General as required by ORS 288.523. The department may not appoint bond counsel under this paragraph unless the State Treasurer has reviewed and approved the terms and conditions of the appointment. ORS 279.712 does not apply to an appointment or agreement described in this paragraph. [1997 c.679 §5; 2001 c.536 §9]

Note: The amendments to 367.025 by section 266, chapter 794, Oregon Laws 2003, become operative March 1, 2005, and apply only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 336 and 337, chapter 794, Oregon Laws 2003. The text that is operative on and after March 1, 2005, is set forth for the user's convenience.

367.025. (1) If the Department of Transportation determines that it is necessary or desirable to issue infrastructure bonds to provide moneys for the Oregon Transportation Infrastructure Fund, the department shall ask the State Treasurer to issue infrastructure bonds.

(2) When the department asks the State Treasurer to issue infrastructure bonds, if the State Treasurer determines that infrastructure bonds shall be issued:

(a) The State Treasurer may authorize and issue infrastructure bonds to provide moneys for the infrastructure fund.

(b) The State Treasurer may enter into agreements with bond underwriters, trustees, financial advisers and other persons to carry out ORS 367.010 to 367.067. The department may appoint bond counsel as authorized by ORS 288.523, or the State Treasurer may enter into an agreement with bond counsel if the services provided under the agreement comply with the provisions of ORS 288.523 and the appointment is approved by the Attorney General as required by ORS 288.523. The department may not appoint bond counsel under this paragraph unless the State Treasurer has reviewed and approved the terms and conditions of the appointment. ORS 279A.140 does not apply to an appointment or agreement described in this paragraph.

367.030 Issuance of revenue bonds; bond covenants; maximum amount of bonds. (1) To provide moneys for the Oregon Transportation Infrastructure Fund or to refund bonds authorized by this section, the State Treasurer may, in cooperation with the Department of Transportation, issue revenue bonds of the State of Oregon that are payable solely from all or any portion of the moneys deposited in the infrastructure fund and may pledge such moneys to secure the revenue bonds. The department or State Treasurer may exercise any power granted to a municipality or public body by the Uniform Revenue Bond Act in connection with bonds authorized by this section. However, the State Treasurer or the department shall not pledge or encumber any moneys of the State of Oregon other than those required by ORS 367.010 to 367.067 to be deposited in the infrastructure fund.

(2) The department may enter into covenants for the benefit of the owners of bonds authorized by this section regarding the use of moneys in the infrastructure fund, the providing of infrastructure assistance and the collection of infrastructure loans. Any such covenants shall be binding upon the State of Oregon in accordance with their terms and shall be enforceable against the State of Oregon by owners of the bonds. However, no owner of bonds authorized by this section shall ever have the right to compel any exercise of the taxing power of the state to pay any such bonds or the interest thereon, or to enforce payment thereof against any property of the state, except those moneys in the infrastructure fund that are pledged to pay the bonds and any moneys the department or an agency may agree to use to repay infrastructure loans under ORS 367.040. Bonds authorized by this section shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the state, except moneys in the infrastructure fund that are pledged to pay the bonds, and any property that the department or agency pledges, mortgages or assigns to secure infrastructure loans pursuant to ORS 367.040. Revenue bonds authorized by this section shall not constitute a debt of the state or a lending of the credit of the state within the meaning of any constitutional or statutory limitation.

(3) The total principal amount of revenue bonds that are issued under this section and outstanding at any time shall not exceed $200 million. [1997 c.679 §6]

367.035 Loans to municipalities; authority of municipalities; repayment plan. (1) Notwithstanding any other provision of law or any restriction on indebtedness contained in a charter, a municipality may obtain an infrastructure loan from the Department of Transportation by entering into a loan contract with the department. A municipality that obtains an infrastructure loan may pledge to the repayment of the loan all or any portion of the revenue sources specified in this subsection. A municipality shall repay an infrastructure loan in accordance with the terms of the loan contract and to the extent required by the loan contract from any or all of the following sources:

(a) Revenues of any transportation project, including special assessment revenues;

(b) Moneys withheld under subsection (3) or (5) of this section;

(c) The general fund of the municipality; or

(d) Any other sources including, but not limited to, an appropriation or allocation to a county under ORS 366.762 to 366.768 or to a city under ORS 366.785 to 366.820.

(2) An infrastructure loan contract with a municipality may provide that a portion of the proceeds of the loan be applied to fund a reserve fund to secure the repayment of the loan or secure the repayment of revenue bonds issued to finance the loan.

(3) An infrastructure loan contract with a city or county may provide that all or a portion of the principal and interest on an infrastructure loan be repaid by withholding all or a portion of an apportionment due to a county under ORS 366.762 to 366.768 or due to a city under ORS 366.785 to 366.820. The department shall immediately transfer funds withheld under this subsection from the State Highway Fund to the Oregon Transportation Infrastructure Fund.

(4) A municipality that intends to obtain an infrastructure loan shall adopt an ordinance or resolution authorizing the infrastructure loan.

(5) If a municipality fails to comply with the terms of an infrastructure loan contract, the department may seek any legal or equitable remedy to obtain compliance or payment of damages. If any municipality fails to make an infrastructure loan payment when due, the State of Oregon shall, at the request of the department, withhold any funds due to the municipality from the state and apply the amounts withheld to pay the entire amount owed by the municipality under the infrastructure loan contract. The department shall deposit funds withheld under this subsection in the account of the infrastructure fund to which the municipality's infrastructure loan payments are required to be deposited. The department may waive the right of the State of Oregon to withhold moneys under this subsection only if the department

has not pledged the right as security for the repayment of infrastructure bonds. [1997 c.679 §7; 2003 c.201 §14]

367.040 Loans to state agencies; loan contract. (1) Notwithstanding ORS 283.087 (5), an agency may obtain an infrastructure loan. An agency may agree to pay the infrastructure loan from any or all of the available moneys of the agency and may pledge all or any portion of those moneys to repay the infrastructure loan. An infrastructure loan of an agency does not constitute a debt of the state or a lending of the credit of the state within the meaning of any constitutional or statutory limitation.

(2) If an infrastructure loan is made to an agency, the terms of the infrastructure loan contract bind the State of Oregon and the agency, and the agency shall unconditionally repay the infrastructure loan from the moneys the agency has pledged in accordance with the terms of the infrastructure loan contract. [1997 c.679 §8; 2003 c.201 §15]

367.050 Powers of department. The Department of Transportation may:

(1) Make all contracts and agreements, execute and deliver all instruments and do all things necessary or convenient to provide financial assistance for transportation projects in accordance with ORS 367.010 to 367.067 or to perform covenants made to secure infrastructure bonds; and

(2) Enter into and perform such contracts and agreements with entities concerning the planning, construction, lease or other acquisition, installation or financing of transportation projects. [1997 c.679 §9; 2003 c.201 §16]

367.060 Department pledge to ensure loan guarantees; transfer of moneys from State Highway Fund. (1) The Department of Transportation may pledge not more than $50 million to ensure the repayment of loan guarantees or other extensions of credit made to or on behalf of municipalities to finance transportation projects or to ensure repayment of loan guarantees or other extensions of credit as provided in ORS 367.816. The lien of a pledge made under this subsection is subordinate to the lien of a pledge securing bonds issued under ORS 367.605 to 367.670.

(2) If, during a fiscal year, the moneys in the Oregon Transportation Infrastructure Fund are insufficient to cover any claims by financial institutions, credit enhancement providers, bondholders or bond trustees that arise from loan guarantees or other extensions of credit made under ORS 367.010 to 367.067, the department shall transfer, as often as necessary or appropriate in that fiscal year, moneys from the State Highway Fund to satisfy such claims. However, the department may not make a transfer of moneys from the State Highway Fund otherwise required by this section if:

(a) The transfer will reduce the moneys in the State Highway Fund to an amount that is insufficient to pay the principal and interest that will fall due during the fiscal year on outstanding bonds issued under ORS 367.555 to 367.600; or

(b) The transfer relates to a claim arising out of a transportation project for which moneys in the State Highway Fund may not be used under section 3a, Article IX, Oregon Constitution, and ORS 366.505. [1999 c.1036 §2; 2003 c.201 §17; 2003 c.790 §15]

(Short Line Railroads)

367.066 Definitions for ORS 367.066 and 367.067. As used in this section and ORS 367.067:

(1) "Credit premium" means the amount required to be paid to the United States Secretary of Transportation before disbursement of a federal loan under RRIFP.

(2) "RRIFP" means the Railroad Rehabilitation and Improvement Financing Program, 49 C.F.R. 260 et seq.

(3) "Short line railroad" means a class II or class III railroad as defined in 49 C.F.R. 1201. [2001 c.942 §15]

367.067 Short Line Credit Premium Account. (1) The Short Line Credit Premium Account is established as an account in the Oregon Transportation Infrastructure Fund. Moneys in the Short Line Credit Premium Account are continuously appropriated to the Department of Transportation for the purpose of carrying out the provisions of this section.

(2) A short line railroad may apply to the Department of Transportation for infrastructure assistance in a manner determined by the department by rule.

(3) In evaluating applications for infrastructure assistance under this section, the department shall give priority to projects that:

(a) Enhance public safety;

(b) Enhance the environment;

(c) Appear creditworthy, providing financially secure sources of repayment to secure a federal credit instrument;

(d) Promote rural economic development;

(e) Reduce demand for expansion of highway capacity;

(f) Enable Oregon companies to be more competitive in regional, national and international markets;

(g) Preserve or enhance rail or intermodal service to small communities or rural areas; and

(h) Will be operated by a short line railroad with federal credit assistance under the RRIFP.

(4) If a short line railroad receives infrastructure assistance under this section for a project for which federal credit assistance was received under RRIFP, and if all or part of the credit premium is returned to the railroad by the federal government, the railroad shall remit to the department the amount of moneys returned to the railroad.

(5) All moneys remitted to the department under subsection (4) of this section shall be deposited by the department into the Short Line Credit Premium Account. [2001 c.942 §16]

Note: Section 14, chapter 942, Oregon Laws 2001, provides:

Sec. 14. Lottery bonds for short line railroads. (1) Pursuant to ORS 286.560 to 286.580, lottery bonds may be issued to fund projects for the improvement, restoration, upgrading and preservation of systems, facilities and equipment of short line railroads.

(2) The use of lottery bond proceeds is authorized based on the following findings:

(a) A well developed system of short line railroads is critical to the economic growth and stability of Oregon;

(b) Traditional funding techniques such as grant programs are unable to keep pace with infrastructure investment in Oregon due to budgetary constraints on state government;

(c) Short line railroads serve the public good and would benefit from the provision of public assistance;

(d) New investment capital can be attracted to infrastructure projects that are capable of generating their own revenue stream through dedicated funding sources;

(e) A state credit program can complement existing funding sources by leveraging resources from nonstate sources;

(f) The state could mitigate the need to expand highways by encouraging the development and sustainability of a statewide system of short line railroads; and

(g) Newly established state credit programs are most effectively delivered when they augment and utilize the resources of previously established state credit programs.

(3) The aggregate principal amount of lottery bonds issued pursuant to this section may not exceed the sum of $4 million, plus an additional amount established by the State Treasurer to be necessary to pay bond-related costs. Lottery bonds issued pursuant to this section shall be issued only at the request of the Director of Transportation.

(4) The net proceeds of lottery bonds issued pursuant to this section shall be deposited in the Short Line Credit Premium Account established by ORS 367.067.

(5) The proceeds of lottery bonds issued pursuant to this section may be used only for the purposes set forth in subsection (1) of this section and for bond-related costs. [2001 c.942 §14; 2003 c.741 §6]

(Industrial Rail Spurs)

367.070 Industrial Rail Spur Fund. The Industrial Rail Spur Fund is established separate and distinct from the General Fund. The moneys in the Industrial Rail Spur Fund and the interest earnings of the fund are continuously appropriated to the Department of Transportation for the purpose of financing grants and loans to fund industrial rail spurs. The fund consists of moneys deposited in the fund under section 10, chapter 741, Oregon Laws 2003, and may include fees, moneys, federal funds, Miscellaneous Receipts or other revenues available for the purpose. [2003 c.741 §11]

Note: 367.070 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 367 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Section 10, chapter 741, Oregon Laws 2003, provides:

Sec. 10. (1) For the biennium beginning July 1, 2003, pursuant to ORS 286.560 to 286.580, the State Treasurer, at the request of the Director of Transportation, may issue lottery bonds to finance grants and loans to fund industrial rail spurs typically used to provide access for transportation of raw materials and finished products between manufacturing facilities and main rail lines.

(2) The use of lottery bond proceeds is authorized based on the following findings:

(a) A well-developed system of industrial rail spurs supports state and local government efforts to attract new industries to Oregon and to keep and encourage expansion of existing industries;

(b) Industrial rail spurs serve the public good and would benefit from the provision of public assistance; and

(c) A state credit program can complement existing funding sources by leveraging resources from nonstate sources.

(3) The aggregate principal amount of lottery bonds issued pursuant to this section may not exceed the sum of $8 million, plus an additional amount established by the State Treasurer to be necessary to pay bond-related costs.

(4) The net proceeds of lottery bonds issued pursuant to this section must be deposited in the Industrial Rail Spur Fund established by section 11 of this 2003 Act [367.070].

(5) The proceeds of lottery bonds issued pursuant to this section may be used only for the purposes set forth in subsection (1) of this section and for bond-related costs. [2003 c.741 §10]

SHORT-TERM DEBT

367.105 Short-term borrowing; conditions; repayment. (1) In addition to the authority for short-term borrowing granted in ORS 288.165, the Department of Transportation, acting through the State Treasurer, may borrow money by entering into a credit agreement, a line of credit or a revolving line of credit, or by issuing a note, a warrant, a short-term promissory note, commercial paper or another similar obligation, for the following purposes:

(a) Providing matching funds as set forth in ORS 366.564.

(b) Providing funds with which to pay when due the principal or interest of bonded indebtedness created for highway purposes, the payment of which is necessary to preserve the financial credit of the state.

(c) Meeting emergencies.

(d) Providing funds for use by the department during times when expenditures exceed revenues, whether or not the department anticipated that expenditures would exceed revenues.

(e) Providing funds for the payment of current expenses in anticipation of revenue, grants or other moneys intended for payment of the current expenses.

(f) Providing funds for interim financing of a capital asset or project to be undertaken by the department.

(g) Refunding an outstanding obligation.

(2) Short-term borrowing under this section may be in such denominations or for such sums as the department fixes and may draw interest at a negotiated rate.

(3) The total outstanding indebtedness created by the short-term borrowing under this section may not exceed $100 million in outstanding principal amount.

(4) All short-term borrowing issued pursuant to this section shall mature within three years from the date of issuance.

(5) The department shall pay for and secure short-term borrowing under this section with funds from the State Highway Fund or other funds that are legally available to the department for the purposes for which the moneys were borrowed, including moneys received by the department from the United States government. [Formerly 366.605; 1969 c.427 §1; 1975 c.614 §11; 1981 c.94 §32; 1981 c.311 §1; 1991 c.793 §3; 2003 c.201 §18]

367.155 [Formerly part of 366.735; repealed by 1981 c.660 §18]

367.160 [Formerly 366.740; 1981 c.94 §33; repealed by 1981 c.660 §18]

GRANT ANTICIPATION REVENUE BONDS

367.161 Definitions for ORS 367.161 to 367.181. As used in ORS 367.161 to 367.181:

(1) "Federal transportation funds" means funds apportioned or allocated, or anticipated to be apportioned or allocated in the current or a future federal fiscal year, to the state by the United States Department of Transportation for use on a federal-aid highway or highway safety construction project or other federal funds that may be used for a highway improvement project that are available or are anticipated to be available in the current or a future federal fiscal year.

(2) "Grant anticipation revenue bond" means a revenue bond secured based on receipt, or anticipation of receipt in the current or a future federal fiscal year, of federal transportation funds.

(3) "Highway improvement project" means a federal-aid highway or highway safety construction project, a transportation project or another project for which the Department of Transportation may use federal transportation funds. [2003 c.201 §2]

367.163 Purposes for which bonds may be issued. The State Treasurer, at the request of the Department of Transportation, may issue grant anticipation revenue bonds for the purposes of:

(1) Financing highway improvement projects including highway improvement projects already under way or scheduled;

(2) Financing the restoration, reconstruction or renovation of highway improvements in Oregon;

(3) Financing transportation projects;

(4) Paying the costs of issuance of the revenue bonds including, but not limited to, the costs and fees of paying agents, trustees and remarketing agents; or

(5) Paying the costs of credit enhancements. [2003 c.201 §3]

367.165 [Formerly 366.745; repealed by 1981 c.660 §18]

367.166 Requirements for grant anticipation revenue bonds; authority of State Treasurer. (1) A grant anticipation revenue bond issued under ORS 367.161 to 367.181:

(a) Must contain on its face a statement that the ad valorem taxing power of this state or any political subdivision of this state is not pledged to the payment of the principal or the interest on the revenue bond.

(b) May be sold at public competitive bid or at private negotiated sale.

(c) May be sold at the price or prices established by the State Treasurer, upon the advice of the Department of Transportation.

(d) Must mature on or before a date determined by calculation of the expected economic life of the improvements, assets and projects financed with the proceeds of the revenue bonds.

(2) The State Treasurer shall determine, upon the advice of the department and consistent with ORS 288.805 to 288.945, all aspects relating to the sale of revenue bonds under ORS 367.161 to 367.181 that are not otherwise specifically provided, including rate of interest and discount, if any. [2003 c.201 §4]

367.168 Revenue declaration. (1) Before grant anticipation revenue bonds are issued under ORS 367.161 to 367.181, the Department of Transportation shall prepare a revenue declaration authorizing issuance of the revenue bonds. The declaration must be signed by the Director of Transportation, or the director's designee, and must be approved by the State Treasurer, or the treasurer's designee.

(2) A declaration under this section may:

(a) Pledge all or a portion of the moneys described in ORS 367.173 for purposes of the revenue bonds to be issued.

(b) Limit the purposes to which the department may apply the proceeds of the sale.

(c) Make pledges concerning the proceeds of the sale or moneys described in ORS 367.173 to secure payment of the revenue bonds issued under ORS 367.161 to 367.181.

(d) Limit or otherwise provide for the issuance of additional revenue bonds, including refunding bonds, under ORS 367.161 to 367.181, limit or establish terms upon which additional revenue bonds, including refunding bonds, may be issued under ORS 367.161 to 367.181.

(e) Provide for procedures, if any, by which the terms of contracts with bondholders may be amended or rescinded, for the percentage of the bondholders that must consent to amendment or rescission of the contract and for the manner of bondholder consent to amendment or rescission of the contract.

(f) Establish a trustee and vest the trustee with property, rights, powers or duties in trust, as the State Treasurer determines appropriate.

(g) Provide for other matters affecting issuance of the revenue bonds.

(3) A declaration under this section may establish the same requirements, be subject to the same provisions, create the same obligations and confer the same rights as an indenture under ORS 367.171, if so provided in the declaration. [2003 c.201 §5]

367.170 [Formerly 366.750; repealed by 1981 c.660 §18]

367.171 Indenture. An indenture under which grant anticipation revenue bonds are issued may provide for:

(1) The pledging of all or a portion of the moneys described in ORS 367.173 to the payment of the principal, interest, premium, if any, or the bond debt service of revenue bonds issued under ORS 367.161 to 367.181;

(2) Requirements concerning a particular series of revenue bonds issued under ORS 367.161 to 367.181;

(3) Requirements concerning moneys described in ORS 367.173 and payment on outstanding revenue bonds issued under ORS 367.161 to 367.181;

(4) A contractual undertaking for the benefit of bondholders concerning assessment, levy collection and deposit of moneys described in ORS 367.173;

(5) Provisions concerning the registration of revenue bonds or the recording or filing of the indenture;

(6) Provisions relating to a reserve account. Provisions under this subsection may include, but are not limited to, the amount required for an account and provisions for replenishing the account from moneys described in ORS 367.173;

(7) Provisions concerning trustees including, but not limited to:

(a) Establishing funds, accounts or moneys described in ORS 367.173 over which the trustee will be custodian; and

(b) Providing that a trustee will be appointed; or

(8) Establishing the maturation date of the revenue bonds. [2003 c.201 §6]

367.173 Moneys that may be used for payment of grant anticipation revenue bonds. The principal, interest, premium, if any, and the purchase or tender price of the grant anticipation revenue bonds issued under ORS 367.161 to 367.181 are payable solely from the following moneys:

(1) Federal transportation funds.

(2) To the extent affirmatively pledged at the time issuance of revenue bonds is authorized, the following moneys that are lawfully available:

(a) Moneys deposited in the State Highway Fund established under ORS 366.505.

(b) Except as provided in paragraph (c) of this subsection, moneys, once deposited in the State Highway Fund established under ORS 366.505, from the following sources may be affirmatively pledged:

(A) Moneys from the taxes and fees on motor carriers imposed under ORS 825.474 and 825.480.

(B) Moneys from the tax on motor vehicle fuel imposed under ORS 319.020.

(C) Moneys from the tax on fuel used in motor vehicles imposed under ORS 319.530.

(D) Moneys described under ORS 803.090 from the titling of vehicles.

(E) Moneys described under ORS 803.420 from the registration of vehicles.

(F) Moneys described under ORS 807.370 relating to the issuance of driver licenses and driver permits.

(G) Moneys received by the Department of Transportation from taxes, fees or charges imposed after January 1, 2001, or other revenues or moneys received by the department from sources not listed in subparagraphs (A) to (F) of this paragraph that are lawfully available to be pledged under this section.

(c) Moneys described in paragraph (b) of this subsection do not include:

(A) Moneys provided for appropriations to counties under ORS 366.762 to 366.768.

(B) Moneys provided for appropriations to cities under ORS 366.785 to 366.820.

(C) Moneys in the account established under ORS 366.512 for parks and recreation. [2003 c.201 §7]

367.175 [Formerly 366.755; 1975 c.462 §5; repealed by 1981 c.660 §18]

367.176 Refunding grant anticipation revenue bonds. The State Treasurer may issue grant anticipation revenue bonds to refund outstanding grant anticipation revenue bonds or other obligations, the proceeds of which were used to finance highway improvement projects. Refunding and advance refunding bonds authorized in this section are subject to the provisions of ORS 367.161 to 367.181. [2003 c.201 §8]

367.178 Collection and use of federal transportation funds. (1) When grant anticipation revenue bonds have been issued under ORS 367.161 to 367.181, the Department of Transportation shall collect federal transportation funds and may, as provided by the department when issuance of the revenue bonds was authorized, use the funds:

(a) For deposit into one or more special funds or accounts that may be pledged to secure payment of the revenue bonds.

(b) For payment of the costs of highway improvement projects.

(c) For reimbursement to the department of moneys previously spent on highway improvement projects.

(2) The department may direct the United States government to deposit federal transportation funds directly with a trustee for the holders of the revenue bonds to secure payment of the revenue bonds.

(3) The department shall use the proceeds of a sale of revenue bonds issued under ORS 367.161 to 367.181 to pay:

(a) The costs and expenses incurred in the construction or acquisition of a highway improvement project.

(b) Legal and financial costs and expenses incurred to issue or administer the revenue bonds.

(4) If moneys pledged to secure Highway User Tax Bonds pursuant to ORS 367.605 are also pledged to secure payment of principal, interest, premium, if any, and purchase or tender price of grant anticipation revenue bonds issued under ORS 367.161 to 367.181, the pledge to secure grant anticipation revenue bonds issued under ORS 367.161 to 367.181 is subordinate and subject to prior use of the moneys to pay Highway User Tax Bonds. [2003 c.201 §9]

367.180 [Formerly 366.760; repealed by 1981 c.660 §18]

367.181 Limits on obligation of grant anticipation revenue bonds. (1) Grant anticipation revenue bonds issued under ORS 367.161 to 367.181 are not general obligations of the State of Oregon or of an agency, department, board, commission, officer or employee of the State of Oregon.

(2) The revenue bonds are a limited obligation payable solely from federal transportation funds received by the Department of Transportation and, if provided by the department when issuance of the revenue bonds is authorized, other moneys lawfully available for the purpose and affirmatively pledged to the payment of principal, interest, premium, if any, and purchase or tender price of the revenue bonds.

(3) A holder of revenue bonds issued under ORS 367.161 to 367.181 may not compel the payment of federal transportation funds to the Department of Transportation. [2003 c.201 §10]

367.185 [1975 c.436 §6; repealed by 1981 c.660 §18]

367.202 [Formerly 366.625; repealed by 1963 c.61 §1]

367.204 [Formerly 366.627; repealed by 1963 c.61 §1]

367.206 [Formerly 366.629; repealed by 1963 c.61 §1]

367.208 [Formerly 366.631; repealed by 1963 c.61 §1]

367.210 [Formerly 366.633; repealed by 1963 c.61 §1]

367.212 [Formerly 366.635; repealed by 1963 c.61 §1]

367.214 [Formerly 366.637; repealed by 1963 c.61 §1]

367.216 [Formerly 366.639; repealed by 1963 c.61 §1]

367.218 [Formerly 366.641; repealed by 1963 c.61 §1]

367.220 [Formerly 366.643; repealed by 1963 c.61 §1]

BONDED INDEBTEDNESS FOR STATE HIGHWAYS

367.226 [Formerly 366.645; repealed by 2003 c.201 §39]

367.228 [Formerly 366.650; 1989 c.610 §1; repealed by 2003 c.201 §39]

367.230 [Formerly 366.655; repealed by 2003 c.201 §39]

367.232 [Formerly 366.660; repealed by 2003 c.201 §39]

367.234 [Formerly 366.665; 1981 c.660 §20; repealed by 2003 c.201 §39]

367.236 [Formerly 366.670; repealed by 2003 c.201 §39]

367.238 [Formerly 366.675; 1975 c.462 §6; 1983 c.740 §120; repealed by 2003 c.201 §39]

367.240 [Formerly 366.680; repealed by 1989 c.610 §3]

367.242 [Formerly 366.685; repealed by 2003 c.201 §39]

367.252 [Formerly 366.688; repealed by 1981 c.660 §18]

367.254 [Formerly 366.689; 1967 c.335 §43; repealed by 1981 c.660 §18]

367.256 [Formerly 366.690; repealed by 1981 c.660 §18]

367.258 [Formerly 366.691; 1981 c.660 §21; 1991 c.67 §91; repealed by 2003 c.201 §39]

367.260 [Formerly 366.692; 1975 c.462 §7; repealed by 1981 c.660 §18]

367.262 [Formerly 366.693; repealed by 1981 c.660 §18]

367.264 [Formerly 366.694; repealed by 1981 c.660 §18]

367.266 [Formerly 366.695; repealed by 1981 c.660 §18]

367.268 [Formerly 366.696; repealed by 1981 c.660 §18]

367.270 [Formerly 366.697; repealed by 1981 c.660 §18]

367.282 [Formerly 366.6980; repealed by 1981 c.660 §18]

367.284 [Formerly 366.6981; repealed by 1981 c.660 §18]

367.286 [Formerly 366.6982; 1967 c.335 §44; repealed by 1981 c.660 §18]

367.288 [Formerly 366.6983; repealed by 1981 c.660 §18]

367.290 [Formerly 366.6984; repealed by 1981 c.660 §18]

367.292 [Formerly 366.6985; 1975 c.462 §8; repealed by 1981 c.660 §18]

367.294 [Formerly 366.6986; repealed by 1981 c.660 §18]

367.296 [Formerly 366.6987; repealed by 1981 c.660 §18]

367.298 [Formerly 366.6988; repealed by 1981 c.660 §18]

367.300 [Formerly 366.6989; repealed by 1981 c.660 §18]

367.302 [Formerly 366.6990; repealed by 1981 c.660 §18]

367.324 [Formerly 366.7000; repealed by 1981 c.660 §18]

367.326 [Formerly 366.7001; repealed by 1981 c.660 §18]

367.328 [Formerly 366.7002; 1967 c.335 §45; repealed by 1981 c.660 §18]

367.330 [Formerly 366.7003; repealed by 1981 c.660 §18]

367.332 [Formerly 366.7004; repealed by 1981 c.660 §18]

367.334 [Formerly 366.7005; 1975 c.462 §9; repealed by 1981 c.660 §18]

367.336 [Formerly 366.7006; repealed by 1981 c.660 §18]

367.338 [Formerly 366.7007; repealed by 1981 c.660 §18]

367.340 [Formerly 366.7008; repealed by 1981 c.660 §18]

367.344 [Formerly 366.7009; repealed by 1981 c.660 §18]

367.346 [Formerly 366.7010; repealed by 1981 c.660 §18]

367.365 [Formerly 366.7020; repealed by 1981 c.660 §18]

367.370 [Formerly 366.7021; 1981 c.660 §48; repealed by 2003 c.201 §39]

367.372 [1961 c.381 §2; repealed by 1981 c.660 §18]

367.380 [Formerly 366.7022; 1967 c.335 §46; repealed by 1981 c.660 §18]

367.385 [Formerly 366.7023; repealed by 1981 c.660 §18]

367.390 [Formerly 366.7024; repealed by 1981 c.660 §18]

367.395 [Formerly 366.7025; 1975 c.462 §10; repealed by 1981 c.660 §18]

367.400 [Formerly 366.7026; repealed by 1981 c.660 §18]

367.405 [Formerly 366.7027; repealed by 1981 c.660 §18]

367.410 [Formerly 366.7028; repealed by 1981 c.660 §18]

367.415 [Formerly 366.7029; 1981 c.660 §49; repealed by 2003 c.201 §39]

367.420 [Formerly 366.7030; repealed by 1981 c.660 §18]

367.425 [1961 c.345 §3; repealed by 1981 c.660 §18]

367.430 [1961 c.345 §4; 1981 c.660 §50; repealed by 2003 c.201 §39]

367.465 [1961 c.483 §1; repealed by 1981 c.660 §18]

367.470 [1961 c.483 §2; repealed by 1981 c.660 §18]

367.480 [1961 c.483 §3; 1967 c.335 §47]

367.485 [1961 c.483 §4; repealed by 1981 c.660 §18]

367.490 [1961 c.483 §5; repealed by 1981 c.660 §18]

367.495 [1961 c.483 §6; 1975 c.462 §11; repealed by 1981 c.660 §18]

367.500 [1961 c.483 §7; repealed by 1981 c.660 §18]

367.505 [1961 c.483 §8; repealed by 1981 c.660 §18]

367.510 [1961 c.483 §9; repealed by 1981 c.660 §18]

367.520 [1961 c.483 §10; repealed by 1981 c.660 §18]

367.550 [1973 c.698 §1; repealed by 2003 c.201 §39]

367.555 Authority to issue general obligation bonds. In addition to the authority now vested by any other provision of law, the Department of Transportation may issue general obligation bonds of the State of Oregon used to provide funds to defray the costs of building and maintaining permanent roads, including the costs of location, relocation, improvement, construction and reconstruction of state highways and bridges, in an outstanding principal amount that is subject to the provisions of ORS 286.505 to 286.545. [1973 c.698 §2; 1981 c.660 §32; 2003 c.201 §19]

367.560 Disposition and use of general obligation bond proceeds. All moneys obtained from the sale of general obligation bonds under ORS 367.555 to 367.600 must be paid over to the State Treasurer and credited by the State Treasurer to the State Highway Fund. Such moneys may be used only for the purposes stated in ORS 367.555 to 367.600 and, pending the use of such moneys for

highway purposes, may be invested as provided by law. [1973 c.698 §3; 2003 c.201 §20]

367.565 Procedure for issuing general obligation bonds under ORS 367.555 to 367.600. The Department of Transportation shall issue general obligation bonds under ORS 367.555 to 367.600 in accordance with ORS 286.031 to 286.066. [1973 c.698 §4; 1981 c.660 §33; 2003 c.201 §21]

367.570 [1973 c.698 §5; repealed by 1981 c.660 §18]

367.575 [1973 c.698 §6; repealed by 1981 c.660 §18]

367.580 [1973 c.698 §7; repealed by 1981 c.660 §18]

367.585 [1973 c.698 §8; repealed by 1981 c.660 §18]

367.590 [1973 c.698 §9; repealed by 1981 c.660 §18]

367.595 Setting aside sufficient moneys to pay maturing obligations. The Department of Transportation shall compute and determine in January of each year, after the sale of bonds under ORS 367.555 to 367.600, the amount of principal and interest that will fall due during such year on general obligation bonds then outstanding and unpaid and shall maintain or hold in the State Highway Fund sufficient moneys to pay such maturing obligations. [1973 c.698 §10; 2003 c.201 §22]

367.600 Constitutional debt limits not to be exceeded. The Department of Transportation may not issue or sell general obligation bonds under ORS 367.555 to 367.600 that, singly or in the aggregate with previous debts or liabilities incurred for the building and maintaining of permanent roads, exceed any limitation provided in the Oregon Constitution at the date of the issuance and sale of such general obligation bonds. [1973 c.698 §11; 2003 c.201 §23]

HIGHWAY USER TAX BONDS

367.605 Source of funds to secure Highway User Tax Bonds. (1) Moneys deposited in the State Highway Fund established under ORS 366.505 are pledged to payment of Highway User Tax Bonds issued under ORS 367.615 and 367.670.

(2) Except as provided in subsection (3) of this section, moneys, once deposited in the highway fund from the following sources are subject to the use or pledge described in subsection (1) of this section:

(a) Moneys from the taxes and fees on motor carriers imposed under ORS 825.474 and 825.480.

(b) Moneys from the tax on motor vehicle fuel imposed under ORS 319.020.

(c) Moneys from the tax on fuel used in motor vehicles imposed under ORS 319.530.

(d) Moneys described under ORS 803.090 from the titling of vehicles.

(e) Moneys described under ORS 803.420 from the registration of vehicles.

(f) Moneys described under ORS 807.370 relating to the issuance of driver licenses and driver permits.

(g) Moneys received by the Department of Transportation from taxes, fees or charges imposed after January 1, 2001, or other revenues received by the department from sources not listed in paragraphs (a) to (f) of this subsection that are available for the use or pledge described by this section.

(3) Moneys described under subsection (2) of this section do not include:

(a) Moneys provided for appropriations to counties under ORS 366.762 to 366.768.

(b) Moneys provided for appropriations to cities under ORS 366.785 to 366.820.

(c) Moneys in the account established under ORS 366.512 for parks and recreation.

(4) To the extent affirmatively pledged, moneys from the following sources are subject to the use or pledge described in subsection (1) of this section:

(a) Moneys received by the Department of Transportation from the United States government.

(b) Any other moneys legally available to the department.

(5) Notwithstanding ORS 366.507, the lien or charge of any pledge of moneys securing bonds issued under ORS 367.615 or 367.670 is superior or prior to any other lien or charge and to any law of the state requiring the department to spend moneys for specified highway purposes. [1985 c.551 §2; 2001 c.669 §8; 2003 c.201 §24]

367.610 [1985 c.551 §2a; repealed by 2003 c.201 §39]

367.615 Authority for bond issuance; bonds not general obligation; conditions for issuance of additional bonds; use of bond proceeds. In addition to any authority the Department of Transportation has to issue and sell bonds, the department may issue and sell revenue bonds known as Highway User Tax Bonds as provided in this section:

(1) Bonds issued under this section do not constitute a debt or general obligation of this state or any political subdivision of this state but are secured and payable from moneys described under ORS 367.605. A holder of bonds issued under this section may not compel the exercise of the ad valorem taxing power of the state to pay the bond debt service on the bonds.

(2) This state shall provide for the continued assessment, levy, collection and deposit into the highway fund moneys described under ORS 367.605 in amounts sufficient to pay, when due, the annual bond debt service and other amounts necessary to

meet requirements established by indenture under ORS 367.640.

(3) This state may not in any way impair obligations of any agreement between this state and the holders of bonds issued under this section.

(4) The authority granted by this section is continuing and the department reserves the right, through and with the prior approval of the State Treasurer, to issue additional bonds under this section subject to the following:

(a) Additional bonds must be secured equally and ratably by the pledge and appropriation of moneys described under ORS 367.605 unless the department, as permitted by law and the contracts with owners of outstanding Highway User Tax Bonds, issues additional bonds in different series and secures each series by a lien on and pledge of moneys described under ORS 367.605 that is superior to or subordinate to the lien of the pledge securing any other series of Highway User Tax Bonds.

(b) The department may only issue additional bonds if sufficient moneys described under ORS 367.605 may be pledged to pay the annual bond debt service for all outstanding bonds issued under this section as well as for the additional bonds.

(5) Proceeds from the sale of bonds under this section are declared to be for the purpose of building and maintaining permanent public roads and may be used:

(a) To finance the cost of state highway, county road and city street projects in this state.

(b) To pay the cost of issuing the bonds.

(c) For loans to cities and counties as provided under ORS 367.035 or 367.655.

(d) To pay the bond debt service of the bonds.

(e) To pay the costs of the State Treasurer and the department to administer and maintain the bonds and the Highway User Tax Bond program, including the cost of consultants, advisors, attorneys or other professional service providers appointed, retained or approved by the treasurer or the department.

(f) To pay capitalized interest, principal or premium, if any, of the bonds.

(g) For rebates or penalties due to the United States in connection with the bonds.

(6) The department may issue Highway User Tax Bonds as capital appreciation bonds, auction rate bonds, variable rate bonds, deep discount bonds or deferred interest bonds.

(7) The State Treasurer or the Director of Transportation, if so directed by the treasurer, may obtain credit enhancement or an agreement for exchange of interest rates to provide additional security or liquidity for the bonds or to provide funding, in lieu of cash, for all or a portion of a bond debt service reserve account established with respect to the bonds. [1985 c.551 §3; 2003 c.201 §25]

367.620 Limitation on bond amount. (1) The principal amount of Highway User Tax Bonds issued under ORS 367.615 shall be subject to the provisions of ORS 286.505 to 286.545.

(2) Highway User Tax Bonds may be issued under ORS 367.615 for the purposes described in ORS 367.622 in an aggregate principal amount sufficient to produce net proceeds of not more than $500 million.

(3)(a) Highway User Tax Bonds may be issued under ORS 367.615 for bridge purposes described in section 10 (1), chapter 618, Oregon Laws 2003, in an aggregate principal amount sufficient to produce net proceeds of not more than $1.6 billion.

(b) Highway User Tax Bonds may be issued under ORS 367.615 for modernization purposes described in sections 10 (2) and 11, chapter 618, Oregon Laws 2003, in an aggregate principal amount sufficient to produce net proceeds of not more than $300 million.

(c) The Department of Transportation may designate the extent to which a series of bonds authorized under this subsection is secured and payable on a parity of lien or on a subordinate basis to existing or future Highway User Tax Bonds. [1985 c.551 §4; 1999 c.1036 §4; 2001 c.669 §1; 2002 s.s.1 c.3 §1; 2003 c.618 §6]

Note: Section 2, chapter 3, Oregon Laws 2002 (first special session), provides:

Sec. 2. The Department of Transportation may not issue bonds under the authority granted by ORS 367.620 (2) in an aggregate principal amount that exceeds an amount the department reasonably believes can be paid with $71.2 million in biennial debt service. [2002 s.s.1 c.3 §2]

367.621 Use of private sector resources in specified work. It is the policy of the State of Oregon to use increased revenues from the amendments to ORS 803.090, 803.420, 818.225, 825.476 and 825.480 by sections 1 to 5, chapter 618, Oregon Laws 2003, in a manner that maximizes the creation of new jobs. Each public body, as defined in ORS 174.109, that receives moneys from the revenues generated by the amendments to ORS 803.090, 803.420, 818.225, 825.476 and 825.480 by sections 1 to 5, chapter 618, Oregon Laws 2003, shall use private sector resources to the greatest extent possible in accomplishing the work funded by revenues from the amendments to ORS 803.090, 803.420, 818.225, 825.476 and 825.480 by

sections 1 to 5, chapter 618, Oregon Laws 2003. [2003 c.618 §41]

Note: 367.621 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 367 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Sections 10 to 13, chapter 618, Oregon Laws 2003, provide:

Sec. 10. (1) Proceeds of bonds authorized under ORS 367.620 (3)(a) shall be used as follows:

(a) Replacement and repair of bridges on state highways, $1.3 billion. The Oregon Transportation Commission shall choose projects under this paragraph that meet the criteria for freight mobility projects as defined in section 37 of this 2003 Act [184.611].

(b) Replacement and repair of bridges on county and city highways, $300 million. The commission shall choose projects under this paragraph that meet the criteria for freight mobility projects as defined in section 37 of this 2003 Act. In determining which bridges to replace or repair under this paragraph, the commission shall consult with representatives of local governments.

(2) Except as otherwise provided in section 11 of this 2003 Act, proceeds of bonds authorized under ORS 367.620 (3)(b) shall be used for the modernization program described in ORS 366.507. The commission shall give funding priority for modernization projects funded with the proceeds of bonds authorized under ORS 367.620 (3)(b) to projects that are ready for construction. [2003 c.618 §10]

Sec. 11. (1) The Oregon Transportation Commission shall use $100 million of the net proceeds of bonds authorized under ORS 367.620 (3)(b):

(a) For the capitalizable cost of planning, development, design and construction of projects recommended by the Freight Advisory Committee created by section 2, chapter 240, Oregon Laws 2001 [366.212].

(b) To provide or improve access to industrial land sites. In selecting sites under this paragraph, the commission shall consult with the Economic and Community Development Department and local governments and shall give preference to sites for which local matching moneys are available.

(c) To provide or improve access to sites where jobs can be created.

(2) Notwithstanding ORS 366.507 (4)(b), projects selected under this section need not be equitably distributed throughout the state. [2003 c.618 §11]

Sec. 12. (1) In order to facilitate the replacement and repair of bridges described in section 10 of this 2003 Act, the Department of Transportation, after consultation with affected road authorities, may designate temporary detour routes, and may specify conditions of travel, over highways that are not state highways.

(2) Prior to directing traffic onto a detour route chosen under this section, the department may repair or reconstruct the highways chosen as detour routes if the repair or reconstruction will be cost-effective in minimizing or preventing damage from the increased traffic on the detour route.

(3) The department shall repair damage to highways that are designated as detour routes under this section if the damage results from the increase in traffic caused by the detour.

(4) The department may exercise the authority granted under this section for as long as the replacement and repair of bridges described in section 10 of this 2003 Act continues, or until January 2, 2013, whichever comes first. [2003 c.618 §12]

Sec. 13. Section 12 of this 2003 Act is repealed on January 2, 2013. [2003 c.618 §13]

367.622 Preservation and modernization projects to be funded by specified bonds; rules; selection criteria. (1) As used in this section:

(a) "Highway" has the meaning given that term in ORS 801.305.

(b) "Modernization" has the meaning given that term in ORS 184.651.

(c) "Preservation" has the meaning given that term in ORS 184.651.

(2) Bonds described in ORS 367.620 (2) shall be used to finance preservation and modernization projects chosen by the Oregon Transportation Commission. The commission shall select projects from among the following:

(a) Highways that need increased lane capacity.

(b) Highways and bridges that have weight limitations.

(c) State and local bridges.

(d) Interchanges on multilane highways.

(e) District highways in cities and counties that require preservation. The Department of Transportation shall adopt rules defining "district highway" for purposes of this paragraph.

(3) In choosing projects under subsection (2) of this section, the commission shall use the following criteria, in addition to any criteria developed under ORS 367.623:

(a) Lane capacity projects shall be chosen from a financially constrained list.

(b) Bridge projects shall be chosen on the basis of a bridge inventory or rating system recognized by the commission.

(c) Priority for interchange projects shall be given to projects on multilane highways where safety can be enhanced by constructing a grade-separated interchange to replace an at-grade crossing.

(d) Priority for district highway preservation projects shall be given to those projects that may facilitate transfer of jurisdiction over the highway from the state to a local government.

(e) Projects selected for financing under this section shall be equitably distributed throughout the state, using the criteria for distribution of projects that are used for the Statewide Transportation Improvement Program. [2001 c.669 §2]

Note: 367.622 and 367.623 were added to and made a part of ORS chapter 367 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

367.623 Consultation with local governments for project selection. In establishing criteria other than those specified in ORS 367.622 for selection of projects, and in

choosing projects under ORS 367.622, the Oregon Transportation Commission shall consult with local governments, metropolitan planning organizations and regional transportation advisory groups. [2001 c.669 §3]

Note: See note under 367.622.

367.625 [1985 c.551 §4a; repealed by 1999 c.1036 §6]

367.630 Highway revenue declaration; contents; purpose. (1) Before bonds are issued under ORS 367.615, the Department of Transportation must prepare a highway revenue declaration authorizing issuance of the bonds. The declaration must be signed by the Director of Transportation or a person designated by the director and must be approved by the State Treasurer or a person designated by the State Treasurer.

(2) A declaration prepared under this section may do any of the following:

(a) Pledge any part or all of moneys described under ORS 367.605 for purposes of the bonds to be issued.

(b) Limit the purpose for which the proceeds of the sale may be applied by the department.

(c) Make pledges concerning the proceeds of the sale or moneys described under ORS 367.605 as necessary to secure payment of bonds of the department.

(d) Limit the issuance of additional bonds under ORS 367.615, limit or establish terms upon which additional bonds may be issued under ORS 367.615 or limit or establish the issuance or the terms of issuance or provide for the refunding of outstanding bonds.

(e) Provide for procedures, if any, by which the terms of contracts with bondholders may be amended or rescinded, for the percentage of the bondholders that must consent to amendment or rescinding of such contract and for the manner of bondholder consent to any amendment or rescinding of such contract.

(f) Establish a trustee as described under ORS 367.650.

(g) Vest a trustee appointed under ORS 367.650 with property, rights, powers and duties in trust, as the State Treasurer determines appropriate. Authority granted by this paragraph includes authority to:

(A) Include the rights, powers and duties of a trustee appointed to bondholders.

(B) Limit the rights, powers and duties of the trustee.

(h) Provide for other matters affecting issuance of the bonds.

(3) A declaration under this section may establish the same requirements, be subject to the same provisions, create the same obligations and confer the same rights and is otherwise subject to the same provisions as an indenture under ORS 367.640, if so provided in the declaration. [1985 c.551 §5; 1987 c.158 §64]

367.635 Bond form; sale; price; maturity; provisions subject to determination of State Treasurer. (1) A bond issued under ORS 367.615:

(a) Must contain on its face a statement that the ad valorem taxing power of this state or any political subdivision of this state is not pledged to the payment of the principal or the interest on the bond.

(b) May be sold at public competitive bid or at private negotiated sale.

(c) May be sold at the price or prices established by the State Treasurer, upon the advice of the Department of Transportation.

(d) Must mature on or before a date determined by calculation of the expected economic life of the improvements, assets and projects financed with the proceeds of the bonds. Subject to this paragraph, the time bonds mature may be as established by indenture under ORS 367.640.

(2) The State Treasurer shall determine, upon the advice of the department and consistent with ORS 288.805 to 288.945, all aspects relating to the sale of bonds under ORS 367.615 that are not otherwise specifically provided, including rate of interest and discount, if any. [1985 c.551 §6; 2003 c.201 §26]

367.640 Indenture; provisions. An indenture under which bonds described under ORS 367.615 are issued may provide for any or all of the following:

(1) The pledging of moneys or a portion of moneys described under ORS 367.605 to the payment of the bond debt service on bonds issued under ORS 367.615.

(2) Requirements concerning particular issues of bonds under ORS 367.615.

(3) Requirements concerning moneys described under ORS 367.605 and payment on outstanding bonds issued under ORS 367.615.

(4) A contractual undertaking for the benefit of bondholders concerning assessment, levy collection and deposit of moneys described under ORS 367.605.

(5) Provisions concerning the registration of bonds or recording or filing of the indenture.

(6) Provisions relating to a reserve account under ORS 367.645. Provisions under this subsection may include, but are not limited to, the amount required for such account or provisions for replenishing the account from moneys described under ORS 367.605.

(7) Provisions concerning trustees under ORS 367.650 including, but not limited to:

(a) Establishing funds, accounts or moneys described under ORS 367.605 over which the trustee will be custodian.

(b) Providing that a trustee will be appointed.

(8) Establishing the maturation date for the bonds, subject to ORS 367.635. [1985 c.551 §7; 2003 c.201 §27]

367.645 Reserve account. The Department of Transportation may establish a separate reserve account to provide additional security for bonds issued under ORS 367.615. The following apply to any account established under this section:

(1) The account may be established as part of the highway fund or separately.

(2) The establishment of an account does not, in itself, limit the payment of bond debt service for bonds issued under ORS 367.615 to moneys in the account. Bond debt service for bonds issued under ORS 367.615 may be paid from any moneys under ORS 367.605, whether or not an account is established, unless otherwise provided by indenture under ORS 367.640.

(3) The account is subject to any provisions established by indenture under ORS 367.640 concerning the amount of money in the account or the replenishing of moneys if the account is drawn down at any time while bonds are outstanding.

(4) The account is subject to any other provisions concerning the account that are established by indenture under ORS 367.640. [1985 c.551 §8; 1989 c.610 §2; 2003 c.201 §28]

367.650 Trust indenture to secure bonds; provisions. At the discretion of the State Treasurer, bonds issued under ORS 367.615 may be secured by a trust indenture. A trust indenture established under this section is subject to the following:

(1) The trust indenture shall be by and between the state and a trustee.

(2) The trustee may be any trust company or bank having the powers of a trust company whether inside or outside the state.

(3) The trustee may act as custodian as provided for by indenture under ORS 367.640.

(4) The trustee must be jointly appointed by the director and the State Treasurer.

(5) The trustee shall be vested with such powers and duties as provided for by indenture under ORS 367.640. [1985 c.551 §9]

367.655 Loan of bond proceeds to cities and counties; use of loans; rules. (1) Notwithstanding any other provision of law or any provision of charter or local ordinance to the contrary:

(a) The Department of Transportation may loan a portion of proceeds from bonds issued under ORS 367.615 to cities and counties; and

(b) Cities and counties may borrow moneys under this section.

(2) Any loan made under this section is subject to all of the following provisions:

(a) Moneys from the loan may only be used to defray costs of location, relocation, improvements, construction and reconstruction of city and county streets and roads.

(b) The department shall establish rules concerning the making of agreements for the loans. Repayment of principal and interest by any city or county must be made according to the agreement between the department and the city or county.

(c) If a city or county defaults of repayment, the department may withhold any part of the appropriation or allocation to the city under ORS 366.785 to 366.820 or the county under ORS 366.762 to 366.768 as provided for in the agreement for repayment made under this section. [1985 c.551 §10; 2003 c.201 §29]

367.660 Lien on certain moneys pledged for bonds; terms of lien. If moneys under ORS 367.605 are pledged for purposes of bonds by indenture under ORS 367.640, a lien is established upon the moneys. A lien established by this section is subject to all of the following:

(1) The lien is a first lien and security interest and prior charge upon the pledged moneys except to the extent provided otherwise by the indenture.

(2) The lien is valid and binding from the time the pledge is made.

(3) The pledged moneys are immediately subject to the lien without physical delivery or further act.

(4) The lien is valid and binding against all parties having claims on the money of any kind including claims under tort or contract.

(5) The lien is valid and binding against all parties irrespective of whether the parties have notice of the lien.

(6) No bond, indenture or any other instrument by which the pledge is made or the lien created must be recorded or filed except as provided by the indenture under ORS 367.640. [1985 c.551 §11; 2003 c.201 §30]

367.665 Interest on bonds exempt from state income tax. The interest upon all bonds issued under ORS 367.615 and upon all refunding and advance refunding bonds issued under ORS 367.670 is exempt from personal income taxation imposed by this state under ORS chapter 316. [1985 c.551 §12]

367.670 Refunding bonds. Outstanding bonds issued under ORS 367.615 may be refunded by the issuance of refunding or advance refunding bonds. Refunding and advance refunding bonds issued under this section are subject to the provisions relating to bonds issued under ORS 367.615 and are subject to and shall be issued in accordance with the provisions of ORS 286.051 and 288.605 to 288.695. [1985 c.551 §13]

BONDED INDEBTEDNESS FOR CITY AND COUNTY ROADS AND RECREATION FACILITIES

367.700 Authority to sell limited amount of bonds under ORS 367.700 to 367.750. In addition to the authority now vested by any other provision of law state highway bonds of the State of Oregon used to provide funds for purposes of ORS 367.700 to 367.750 in the aggregate principal sum may not exceed $50 million. [1975 c.211 §1; 1981 c.660 §34]

367.705 Use of funds; priority. (1) The Department of Transportation shall make loans to cities and counties from funds available under ORS 367.700 to 367.750 for the purposes stated in section 3a, Article IX of the Oregon Constitution.

(2) If funds available under ORS 367.700 to 367.750 are not sufficient to fund all projects for which funds are applied by cities and counties, the department shall give priority to projects in cities and counties having the highest rates of unemployment in this state. [1975 c.211 §2; 2003 c.201 §31]

367.710 Repayment by city or county; interest. (1) The Department of Transportation shall cause cities and counties that receive funds under ORS 367.705 to repay bond debt service by withholding from payments due to the city under ORS 366.785 to 366.820 or to the county under ORS 366.762 to 366.768. Funds withheld under this subsection remain in the State Highway Fund available for the purposes authorized by law.

(2) The Department of Transportation shall fix the rate of interest to be charged on any advance made under ORS 367.705. [1975 c.211 §3; 2003 c.201 §32]

367.715 Procedure for issuing bonds under ORS 367.700 to 367.750. All bonds issued under ORS 367.700 to 367.750 must be issued in accordance with ORS 286.031 to 286.066. [1975 c.211 §4; 1981 c.660 §35; 2003 c.201 §33]

367.720 [1975 c.211 §5; repealed by 1981 c.660 §18]

367.725 [1975 c.211 §6; repealed by 1981 c.660 §18]

367.730 [1975 c.211 §7; repealed by 1981 c.660 §18]

367.735 [1975 c.211 §8; repealed by 1981 c.660 §18]

367.740 [1975 c.211 §9; repealed by 1981 c.660 §18]

367.745 Setting aside sufficient moneys to pay maturing bonds. The Department of Transportation shall compute and determine in January of each year, after the sale of bonds under ORS 367.700 to 367.750, the amount of bond debt service that will fall due during such year on bonds then outstanding and unpaid and shall maintain or hold in the State Highway Fund sufficient moneys to pay such maturing obligations. [1975 c.211 §10; 2003 c.201 §34]

367.750 Constitutional debt limits not to be exceeded. The Department of Transportation may not issue or sell general obligation bonds under ORS 367.700 to 367.750 that, singly or in the aggregate with previous debts or liabilities incurred for the building and maintaining of permanent roads, exceed any limitation provided in the Oregon Constitution at the date of the issuance and sale of such bonds. [1975 c.211 §11; 2003 c.201 §35]

OREGON INNOVATIVE PARTNERSHIPS PROGRAM

367.800 Findings. The Legislative Assembly finds that:

(1) Entrepreneurial approaches to the acquisition, design, management and financing of transportation projects will accelerate cost-effective project delivery.

(2) Entrepreneurial approaches can bring substantial benefits to the public in transportation project development and execution.

(3) Risk management is a critical component of partnerships for transportation projects.

(4) Successful implementation of an Oregon innovative partnership program for transportation projects requires that risk in a project be managed and shared by public and private sector participants, with the partner best able to control a risk bearing responsibility for the risk.

(5) The Legislative Assembly and the executive branch of government accept responsibility for providing predictability for partnerships for transportation projects and for allowing negotiated agreements to be implemented.

(6) The development, acquisition and construction of transportation projects creates jobs and furthers economic development in Oregon by, among other things:

(a) Increasing the economy and efficiency of public transportation, improving the flow of commerce into and around the state and the surrounding region, improving the attractiveness of Oregon to new businesses and supporting the operations and prosperity of existing businesses; and

(b) Improving the movement of people into and around the state and the surrounding region, alleviating congestion and crowding and reducing the burdens on existing public transportation systems and transportation facilities. [2003 c.790 §1]

Note: 367.800 to 367.826 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 367 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

367.802 Definitions. As used in ORS 367.800 to 367.824:

(1) "Agreement" means a written agreement, including but not limited to a contract, for a transportation project that is entered into under ORS 367.806.

(2) "Private entity" means any entity that is not a unit of government, including but not limited to a corporation, partnership, company, nonprofit organization or other legal entity or a natural person.

(3) "Transportation project" or "project" means any proposed or existing undertaking that facilitates any mode of transportation in this state.

(4) "Unit of government" means any department or agency of the federal government, any state or any agency, office or department of a state, any city, county, district, commission, authority, entity, port or other public corporation organized and existing under statutory law or under a voter-approved charter and any intergovernmental entity created under ORS 190.003 to 190.130, 190.410 to 190.440 or 190.480 to 190.490. [2003 c.790 §2]

Note: See note under 367.800.

367.804 Goals of Oregon Innovative Partnerships Program; authority of Department of Transportation; confidentiality; expenses. (1) The Department of Transportation shall establish the Oregon Innovative Partnerships Program for the planning, acquisition, financing, development, design, construction, reconstruction, replacement, improvement, maintenance, management, repair, leasing and operation of transportation projects.

(2) The goals of the program are to:

(a) Develop an expedited project delivery process;

(b) Maximize innovation; and

(c) Develop partnerships with private entities and units of government.

(3) As part of the program established under this section, the department may:

(a) Solicit concepts or proposals for transportation projects from private entities and units of government.

(b) Accept unsolicited concepts or proposals for transportation projects from private entities and units of government.

(c) Evaluate the concepts or proposals received under this subsection and select potential projects based on the concepts or proposals. The evaluation under this paragraph shall include consultation with any appropriate local government, metropolitan planning organization or area commission on transportation.

(d) Charge an administrative fee for the evaluation in an amount determined by the department.

(4) Following an evaluation by the department of concepts or proposals submitted under subsection (3) of this section, and the selection of potential transportation projects, the department may negotiate and enter into the agreements described in ORS 367.806 for implementing the selected transportation projects.

(5) Except as provided in subsection (6) of this section:

(a) Information related to a transportation project proposed under ORS 367.800 to 367.824, including but not limited to the project's design, management, financing and other details, is exempt from disclosure under ORS 192.410 to 192.505 until:

(A) The department shares the information with a local government, metropolitan planning organization or area commission on transportation under subsection (3)(c) of this section; or

(B) The department completes its evaluation of the proposed project and has selected the proposal for negotiation of an agreement.

(b) After the department has either shared the information described in paragraph (a) of this subsection with a local government, metropolitan planning organization or area commission on transportation, or has completed its evaluation of the proposed project, the information is subject to disclosure under ORS 192.410 to 192.505.

(6) Sensitive business, commercial or financial information that is not customarily provided to business competitors that is submitted to the department in connection with a transportation project under ORS 367.800 to 367.824 is exempt from disclosure under ORS 192.410 to 192.505 until the information is submitted to the Oregon Transportation Commission in connection with its review and approval of the transportation project under ORS 367.806.

(7) The department may, in connection with the evaluation of concepts or proposals for transportation projects, consider any fi-

nancing mechanisms, including but not limited to the imposition and collection of franchise fees or user fees and the development or use of other revenue sources.

(8) The department and any other unit of government may expend, out of any funds available for the purpose, such moneys as may be necessary for the evaluation of concepts or proposals for transportation projects and for negotiating agreements for transportation projects under ORS 367.806. The department or other unit of government may employ engineers, consultants or other experts the department or other unit of government determines are needed for the purposes of doing the evaluation and negotiation. Expenses incurred by the department or other unit of government under this subsection prior to the issuance of transportation project revenue bonds or other financing shall be paid by the department or other unit of government, as applicable, and charged to the appropriate transportation project. The department or other unit of government shall keep records and accounts showing each amount so charged. Upon the sale of transportation project revenue bonds or upon obtaining other financing for any transportation project, the funds expended by the department or other unit of government under this subsection in connection with the project shall be repaid to the department or the unit of government from the proceeds of the bonds or other financing, as allowed by applicable law. [2003 c.790 §3]

Note: See note under 367.800.

367.806 Agreements. (1) As part of the program established under ORS 367.804, the Department of Transportation may:

(a) Enter into any agreement or any configuration of agreements relating to transportation projects with any private entity or unit of government or any configuration of private entities and units of government. The subject of agreements entered into under this section may include, but need not be limited to, planning, acquisition, financing, development, design, construction, reconstruction, replacement, improvement, maintenance, management, repair, leasing and operation of transportation projects.

(b) Include in any agreement entered into under this section any financing mechanisms, including but not limited to the imposition and collection of franchise fees or user fees and the development or use of other revenue sources.

(2) The agreements among the public and private sector partners entered into under this section must specify at least the following:

(a) At what point in the transportation project public and private sector partners will enter the project and which partners will assume responsibility for specific project elements;

(b) How the partners will share management of the risks of the project;

(c) How the partners will share the costs of development of the project;

(d) How the partners will allocate financial responsibility for cost overruns;

(e) The penalties for nonperformance;

(f) The incentives for performance;

(g) The accounting and auditing standards to be used to evaluate work on the project; and

(h) Whether the project is consistent with the plan developed by the Oregon Transportation Commission under ORS 184.618 and any applicable regional transportation plans or local transportation system programs and, if not consistent, how and when the project will become consistent with applicable plans and programs.

(3) The department may, either separately or in combination with any other unit of government, enter into working agreements, coordination agreements or similar implementation agreements to carry out the joint implementation of any transportation project selected under ORS 367.804.

(4) The provisions of ORS 383.003 to 383.027 do not apply to any tollway project entered into under ORS 367.800 to 367.824.

(5) The provisions of ORS chapter 279 do not apply to concepts or proposals submitted under ORS 367.804, or to agreements entered into under this section, except that if public moneys are used to pay any costs of construction of public works that is part of a project, the provisions of ORS 279.348 to 279.380 apply to the public works. In addition, if public moneys are used to pay any costs of construction of public works that is part of a project, the construction contract for the public works must contain provisions that require the payment of workers under the contract in accordance with ORS 279.334 and 279.348 to 279.380.

(6)(a) The department may not enter into an agreement under this section until the agreement is reviewed and approved by the Oregon Transportation Commission.

(b) The department may not enter into, and the commission may not approve, an agreement under this section for the construction of a public improvement as part of a transportation project unless the agreement provides for bonding, financial guarantees, deposits or the posting of other security to secure the payment of laborers, subcon-

tractors and suppliers who perform work or provide materials as part of the project.

(c) Before presenting an agreement to the commission for approval under this subsection, the department must consider whether to implement procedures to promote competition among subcontractors for any subcontracts to be let in connection with the transportation project. As part of its request for approval of the agreement, the department shall report in writing to the commission its conclusions regarding the appropriateness of implementing such procedures.

(7)(a) Except as provided in paragraph (b) of this subsection, documents, communications and information developed, exchanged or compiled in the course of negotiating an agreement with a private entity under this section are exempt from disclosure under ORS 192.410 to 192.505.

(b) The documents, communications or information described in paragraph (a) of this subsection are subject to disclosure under ORS 192.410 to 192.505 when the documents, communications or information are submitted to the commission in connection with its review and approval of a transportation project under subsection (6) of this section.

(8) The terms of a final agreement entered into under this section and the terms of a proposed agreement presented to the commission for review and approval under subsection (6) of this section are subject to disclosure under ORS 192.410 to 192.505.

(9) As used in this section:

(a) "Public improvement" has the meaning given that term in ORS 279.011.

(b) "Public works" has the meaning given that term in ORS 279.348. [2003 c.790 §4]

Note: The amendments to 367.806 by section 4b, chapter 790, Oregon Laws 2003, become operative March 1, 2005. See section 4c, chapter 790, Oregon Laws 2003. The text that is operative on and after March 1, 2005, is set forth for the user's convenience.

367.806. (1) As part of the program established under ORS 367.804, the Department of Transportation may:

(a) Enter into any agreement or any configuration of agreements relating to transportation projects with any private entity or unit of government or any configuration of private entities and units of government. The subject of agreements entered into under this section may include, but need not be limited to, planning, acquisition, financing, development, design, construction, reconstruction, replacement, improvement, maintenance, management, repair, leasing and operation of transportation projects.

(b) Include in any agreement entered into under this section any financing mechanisms, including but not limited to the imposition and collection of franchise fees or user fees and the development or use of other revenue sources.

(2) The agreements among the public and private sector partners entered into under this section must specify at least the following:

(a) At what point in the transportation project public and private sector partners will enter the project and which partners will assume responsibility for specific project elements;

(b) How the partners will share management of the risks of the project;

(c) How the partners will share the costs of development of the project;

(d) How the partners will allocate financial responsibility for cost overruns;

(e) The penalties for nonperformance;

(f) The incentives for performance;

(g) The accounting and auditing standards to be used to evaluate work on the project; and

(h) Whether the project is consistent with the plan developed by the Oregon Transportation Commission under ORS 184.618 and any applicable regional transportation plans or local transportation system programs and, if not consistent, how and when the project will become consistent with applicable plans and programs.

(3) The department may, either separately or in combination with any other unit of government, enter into working agreements, coordination agreements or similar implementation agreements to carry out the joint implementation of any transportation project selected under ORS 367.804.

(4) The provisions of ORS 383.003 to 383.027 do not apply to any tollway project entered into under ORS 367.800 to 367.824.

(5) The provisions of ORS chapters 279, 279A, 279B and 279C do not apply to concepts or proposals submitted under ORS 367.804, or to agreements entered into under this section, except that if public moneys are used to pay any costs of construction of public works that is part of a project, the provisions of ORS 279C.800 to 279C.870 apply to the public works. In addition, if public moneys are used to pay any costs of construction of public works that is part of a project, the construction contract for the public works must contain provisions that require the payment of workers under the contract in accordance with ORS 279C.540 and 279C.800 to 279C.870.

(6)(a) The department may not enter into an agreement under this section until the agreement is reviewed and approved by the Oregon Transportation Commission.

(b) The department may not enter into, and the commission may not approve, an agreement under this section for the construction of a public improvement as part of a transportation project unless the agreement provides for bonding, financial guarantees, deposits or the posting of other security to secure the payment of laborers, subcontractors and suppliers who perform work or provide materials as part of the project.

(c) Before presenting an agreement to the commission for approval under this subsection, the department must consider whether to implement procedures to promote competition among subcontractors for any subcontracts to be let in connection with the transportation project. As part of its request for approval of the agreement, the department shall report in writing to the commission its conclusions regarding the appropriateness of implementing such procedures.

(7)(a) Except as provided in paragraph (b) of this subsection, documents, communications and information developed, exchanged or compiled in the course of negotiating an agreement with a private entity under this section are exempt from disclosure under ORS 192.410 to 192.505.

(b) The documents, communications or information described in paragraph (a) of this subsection are subject to disclosure under ORS 192.410 to 192.505 when the documents, communications or information are submit-

ted to the commission in connection with its review and approval of a transportation project under subsection (6) of this section.

(8) The terms of a final agreement entered into under this section and the terms of a proposed agreement presented to the commission for review and approval under subsection (6) of this section are subject to disclosure under ORS 192.410 to 192.505.

(9) As used in this section:

(a) "Public improvement" has the meaning given that term in ORS 279A.010.

(b) "Public works" has the meaning given that term in ORS 279C.800.

Note: See note under 367.800.

367.808 Evaluation of proposed agreements; role of Attorney General. (1) At the request of the Department of Transportation, the Attorney General may appoint special assistant attorneys general for the purpose of evaluating partnership agreements entered into or to be entered into as part of the program established under ORS 367.804. The special assistant attorneys general shall be under the direction and control of the Attorney General and may:

(a) Advise the Department of Transportation concerning the legality of specific proposed partnerships;

(b) Advise the department on legal procedures and practices related to implementation of specific projects that use a partnership;

(c) Assist the department in negotiating partnership agreements;

(d) Assist the department in preparing any document related to a specific partnership;

(e) Advise the department regarding accounting, investment and tax requirements applicable to specific projects that use a partnership; and

(f) Advise the department regarding any relevant federal securities or other laws and related disclosure requirements.

(2) When the Attorney General, as part of the review under ORS 291.047, reviews an agreement entered into under ORS 367.806, the Attorney General shall:

(a) Recognize that the agreement is the product of a partnership; and

(b) Defer to the business judgment of the department and the Oregon Transportation Commission concerning the assignment of risks and the incentives provided within the agreement. [2003 c.790 §5]

Note: See note under 367.800.

367.810 State Transportation Enterprise Fund. (1) The State Transportation Enterprise Fund is established separate and distinct from the General Fund. Interest earned by the State Transportation Enterprise Fund shall be credited to the fund.

(2) The following moneys shall be deposited into the State Transportation Enterprise Fund:

(a) Proceeds from bonds or other financing instruments issued under the provisions of ORS 367.800 to 367.824;

(b) Revenues received from any transportation project developed under the program established under ORS 367.804; and

(c) Any other moneys that are by donation, grant, contract, law or other means transferred, allocated or appropriated to the fund.

(3) Moneys in the State Transportation Enterprise Fund are continuously appropriated to the Department of Transportation for the purpose of carrying out the provisions of ORS 367.800 to 367.824 and implementing all or portions of any transportation project developed under the program established under ORS 367.804.

(4) Moneys in the State Transportation Enterprise Fund that are transferred from the State Highway Fund or from any one of the sources that comprise the State Highway Fund as specified in ORS 366.505 and that are revenue under section 3a, Article IX of the Oregon Constitution, may be used only for purposes authorized by section 3a, Article IX of the Oregon Constitution.

(5) The department shall establish a separate account in the State Transportation Enterprise Fund for each transportation project that is undertaken under the program established under ORS 367.804. Except as provided in subsection (4) of this section, the department may pledge moneys in the State Transportation Enterprise Fund to secure revenue bonds or any other debt obligations relating to the transportation project for which the account is established.

(6) Moneys in an account established under subsection (5) of this section shall be used as provided in any agreement applicable to the transportation project for which the account is established. [2003 c.790 §6]

Note: See note under 367.800.

367.812 Bonds secured by State Transportation Enterprise Fund; financing of transportation projects. (1) In addition to any authority the Department of Transportation has to issue and sell bonds and other similar obligations, this section establishes continuing authority for the issuance and sale of bonds and other similar obligations in a manner consistent with this section. To finance any transportation project in whole or in part, the department may request that the State Treasurer issue revenue bonds on behalf of the department. Revenue bonds authorized under this section

shall be issued in accordance with the applicable provisions of ORS chapters 286 and 288. The bonds shall be secured by a pledge of, and a lien on, and shall be payable only from moneys in the State Transportation Enterprise Fund established by ORS 367.810 and any other revenues specifically pledged to repayment of the bonds. Such a pledge by the department of its revenues creates a lien that is valid and binding from the time the pledge is made as provided in ORS 288.594. Revenue bonds issued pursuant to this section are not general obligations of the state and are not secured by or payable from any funds or assets of the state other than the moneys and revenues specifically pledged to the repayment of such revenue bonds.

(2) Moneys received from the issuance of revenue bonds or other debt obligations, including any investment earnings thereon, may be expended:

(a) For the purpose of financing the costs of the transportation project for which the bonds are issued;

(b) To pay the costs and other administrative expenses of the bonds;

(c) To pay the costs of credit enhancement or to fund any reserves determined to be necessary or advantageous in connection with the revenue bonds; and

(d) To reimburse the department for any costs related to carrying out the purposes of the program established under ORS 367.804.

(3) Any transportation project may be financed in whole or in part with:

(a) The proceeds of grant anticipation revenue bonds authorized by 23 U.S.C. 122 and applicable state law.

(b) Grants, loans, loan guarantees, lines of credit, revolving lines of credit or other financing arrangements available pursuant to the Transportation Infrastructure Finance and Innovation Act under 23 U.S.C. 181 et seq., or any other applicable federal law.

(c) Infrastructure loans or assistance from the Oregon Transportation Infrastructure Fund established by ORS 367.015.

(4) As security for the payment of financing described in subsection (3) of this section, the revenues from the project may be pledged, but no such pledge of revenues constitutes in any manner or to any extent a general obligation of the state. Any financing described in subsection (3) of this section may be structured on a senior, parity or subordinate basis to any other financing. [2003 c.790 §7]

Note: See note under 367.800.

367.814 Moneys from federal government or other sources. (1) The Department of Transportation or a unit of government may accept from the United States or any of its agencies such funds as are available to this state or to the unit of government for carrying out the purposes of ORS 367.800 to 367.824, whether the funds are made available by grant, loan or other financing arrangement. The department or unit of government may enter into such agreements and other arrangements with the United States or any of its agencies as may be necessary, proper and convenient for carrying out the purposes of ORS 367.800 to 367.824.

(2) The department or a unit of government may accept from any source any grant, donation, gift or other form of conveyance of land, money, other real or personal property or other valuable thing made to the State of Oregon, the department or the unit of government for carrying out the purposes of ORS 367.800 to 367.824.

(3) Any transportation project may be financed in whole or in part by contribution of any funds or property made by any private entity or unit of government that is a party to any agreement entered into under ORS 367.806. [2003 c.790 §8]

Note: See note under 367.800.

367.816 Use of moneys in Oregon Transportation Infrastructure Fund for projects. (1) Notwithstanding ORS 367.020, the Department of Transportation may use moneys in the Oregon Transportation Infrastructure Fund established by ORS 367.015 to ensure the repayment of loan guarantees or extensions of credit made to or on behalf of private entities engaged in the planning, acquisition, financing, development, design, construction, reconstruction, replacement, improvement, maintenance, management, repair, leasing or operation of any transportation project that is part of the program established under ORS 367.804.

(2) The lien of a pledge made under this section is subordinate to the lien of a pledge securing bonds payable from moneys in the State Highway Fund described in ORS 366.505, the State Tollway Account established by ORS 383.009 or the State Transportation Enterprise Fund established by ORS 367.810. [2003 c.790 §9]

Note: See note under 367.800.

367.818 Eminent domain powers. The Department of Transportation may exercise the power of eminent domain to acquire property, rights of way or other rights in property for transportation projects that are part of the program established under ORS 367.804, regardless of whether the property will be owned in fee simple by the department. [2003 c.790 §10]

Note: See note under 367.800.

367.820 Creation of district; use of revenues within district. An agreement among the Department of Transportation and other units of government may create a new district, or designate a previously existing district, that includes any or all of the territory within the geographic boundaries of any or all Oregon counties in which a transportation project is located, and may require that all revenues from franchise fees, other user fees or other revenue sources collected within the district in connection with the transportation project be used exclusively for the benefit of the district. [2003 c.790 §11]

Note: See note under 367.800.

367.822 Advisory committees on transportation projects; rules. (1) The Department of Transportation and any unit of government that participates in a transportation project may establish advisory committees to advise the department or the unit of government with respect to transportation projects. An advisory committee shall consist of not fewer than five and not more than nine members, as determined by the department. Members shall be appointed by the department, or in a manner agreed to by the department and any participating unit of government.

(2) At the request of the department, an advisory committee may review concepts or proposals for transportation projects and submit recommendations to the department or the participating unit of government.

(3) An advisory committee shall meet as necessary at times and places fixed by the department or the participating unit of government. The department shall provide personnel services to assist the advisory committee within the limits of available funds. An advisory committee may adopt rules to govern its proceedings and may select officers. [2003 c.790 §12]

Note: See note under 367.800.

367.824 Rules; supremacy of federal law. (1) The Department of Transportation may adopt any rules it considers necessary to implement the provisions of ORS 367.800 to 367.824.

(2) Notwithstanding any provision of ORS 367.800 to 367.824, applicable federal laws, rules and regulations govern in any situation that involves federal funds if the federal laws, rules or regulations:

(a) Conflict with any provision of ORS 367.800 to 367.824;

(b) Require procedures that are additional to or different from those provided in ORS 367.800 to 367.824; or

(c) Require contract provisions not authorized by ORS 367.800 to 367.824. [2003 c.790 §§4a,13]

Note: See note under 367.800.

367.826 Reports to Emergency Board. (1) The Department of Transportation shall report to the Emergency Board at least twice during each interim regarding the transportation projects proposed or agreed to under ORS 367.800 to 367.824.

(2) The report under subsection (1) of this section shall include but need not be limited to information about expenditure of moneys for evaluation of concepts and proposals for transportation projects, agreements entered into, transportation projects that have been agreed to and financing mechanisms being used for transportation projects. [2003 c.790 §16]

Note: See note under 367.800.