

DRAFT

SUMMARY

Establishes Oregon Universities Stability Fund and Universities Capital Improvement and Maintenance Subaccount. Sets conditions for appropriation of moneys in fund and subaccount. Transfers surplus corporate income and excise tax revenue to fund.

Transfers surplus personal income tax revenues that do not exceed six percent of revenue estimate to Oregon Rainy Day Fund. Transfers surplus personal income tax revenues exceeding six percent of revenue estimate to taxpayers.

Repeals statutory provisions establishing Oregon Rainy Day Fund. Provides that transfer of portion of ending balance to Oregon Rainy Day Fund does not occur if amount in fund equals at least 12 percent of General Fund revenues collected during prior biennium.

Takes effect only if _____ Joint Resolution _____ (2011) (LC 3597) is approved by people at next regular general election. Takes effect on effective date of constitutional amendment proposed in _____ Joint Resolution _____ (2011) (LC 3597).

A BILL FOR AN ACT

1
2 Relating to state finance; creating new provisions; amending ORS 291.349,
3 293.146, 293.148, 305.792, 317.853 and 318.074; repealing ORS 293.144; and
4 prescribing an effective date.

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

6 **SECTION 1. (1) The Oregon Universities Stability Fund is estab-**
7 **lished as an account in the General Fund. Moneys in the Oregon Uni-**
8 **versities Stability Fund may be appropriated only for purposes that**
9 **will benefit higher education institutions, higher education activities**
10 **or community colleges authorized by law to receive state aid.**

11 **(2) The Legislative Assembly may appropriate moneys from the**
12 **Oregon Universities Stability Fund only if the appropriation is ap-**

1 proved by three-fifths of the members serving in each house of the
2 Legislative Assembly and the Legislative Assembly finds one of the
3 following:

4 (a) That the last quarterly economic and revenue forecast for a
5 biennium indicates that moneys available to the General Fund for the
6 next biennium will be at least three percent less than appropriations
7 from the General Fund for the current biennium;

8 (b) That there has been a decline for two or more consecutive
9 quarters in the last 12 months in seasonally adjusted nonfarm payroll
10 employment; or

11 (c) That a quarterly economic and revenue forecast projects that
12 revenues in the General Fund in the current biennium will be at least
13 two percent below what the revenues were projected to be in the rev-
14 enue forecast on which the legislatively adopted budget for the current
15 biennium was based.

16 (3) Once each month, in the manner provided by law, the Oregon
17 Department of Administrative Services shall calculate the amount of
18 General Fund interest that is attributable to moneys in the Oregon
19 Universities Stability Fund. Except as provided in section 2 of this 2011
20 Act, the amount calculated under this subsection shall be transferred
21 to the Oregon Universities Stability Fund.

22 (4) The Legislative Assembly may not appropriate for any one
23 biennium more than two-thirds of the amount that is in the Oregon
24 Universities Stability Fund at the beginning of that biennium. If the
25 appropriation is for a biennium that has not yet begun, the Legislative
26 Assembly may use as the base the most recent estimate of the amount
27 that will be in the Oregon Universities Stability Fund at the beginning
28 of the biennium for which the appropriation is made.

29 (5) As used in this section, "legislatively adopted budget" means the
30 budget enacted by the Legislative Assembly during a regular session.

31 SECTION 2. (1) There is created a Universities Capital Improvement

1 **and Maintenance Subaccount within the Oregon Universities Stability**
2 **Fund. If the moneys in the Oregon Universities Stability Fund just**
3 **prior to the time of a transfer scheduled under section 1 of this 2011**
4 **Act or ORS 291.349 equal at least 15 percent of the amount of General**
5 **Fund revenues appropriated to the Oregon University System during**
6 **the prior biennium, moneys that would otherwise be transferred to the**
7 **Oregon Universities Stability Fund shall be deposited in the Universi-**
8 **ties Capital Improvement and Maintenance Subaccount. Moneys in the**
9 **subaccount may be appropriated only for the purposes of capital im-**
10 **provements or deferred maintenance, as defined by law, at Oregon**
11 **University System facilities. Section 1 (2) of this 2011 Act does not**
12 **apply to appropriations of moneys in the subaccount.**

13 **(2) If the moneys in the Oregon Universities Stability Fund just**
14 **prior to the time of a transfer scheduled under section 1 of this 2011**
15 **Act or ORS 291.349 do not equal at least 15 percent of the amount of**
16 **General Fund revenues appropriated to the Oregon University System**
17 **during the prior biennium, the transfer to the Oregon Universities**
18 **Stability Fund shall be made regardless of whether that transfer in-**
19 **creases the amount in the Oregon Universities Stability Fund to at**
20 **least 15 percent of the amount of General Fund revenues appropriated**
21 **to the Oregon University System during the prior biennium.**

22 **SECTION 3. ORS 291.349 is amended to read:**

23 291.349. (1) As soon as practicable after adjournment sine die of the reg-
24 ular session of the Legislative Assembly, the Oregon Department of Admin-
25 istrative Services shall report to the Emergency Board the estimate as of
26 July 1 of the first year of the biennium of General Fund and State Lottery
27 Fund revenues that will be received by the state during that biennium. The
28 Oregon Department of Administrative Services shall base its estimate on the
29 last forecast given to the Legislative Assembly before adjournment sine die
30 of the regular session on which the printed, adopted budget prepared in the
31 Oregon Department of Administrative Services is based, adjusted only insofar

1 as necessary to reflect changes in laws adopted at that session. The report
2 shall contain the estimated revenues from corporate income and excise taxes
3 separately from the estimated revenues from other General Fund sources.
4 The Oregon Department of Administrative Services may revise the estimate
5 if necessary following adjournment sine die of any special or emergency
6 session of the Legislative Assembly but any revision does not affect the basis
7 of the computation described in subsection (3) or (4) of this section.

8 (2) As soon as practicable after the end of the biennium, the Oregon De-
9 partment of Administrative Services shall report to the Emergency Board,
10 or the Legislative Assembly if it is in session, the amount of General Fund
11 revenues collected as of the last June 30 of the preceding biennium. The re-
12 port shall contain the collections from corporate income and excise taxes
13 separately from collections from other sources.

14 (3) If the revenues received from the corporate income and excise taxes
15 during the biennium exceed the amounts estimated to be received from such
16 taxes for the biennium, as estimated after adjournment sine die of the regu-
17 lar session, by two percent or more, the total amount of that excess shall
18 be [*credited to corporate income and excise taxpayers in a percentage amount*
19 *of prior year corporate excise and income tax liability as determined under*
20 *subsection (5) of this section. However, no credit shall be allowed against tax*
21 *liability imposed by ORS 317.090*] **transferred to the Oregon Universities**
22 **Stability Fund established by section 1 of this 2011 Act.**

23 (4) **Subject to section 15, Article IX of the Oregon Constitution:**

24 (a) **If the revenues received from General Fund revenue sources,**
25 **exclusive of those described in subsection (3) of this section, during the**
26 **biennium exceed the amounts estimated to be received from such**
27 **sources for the biennium, as estimated after adjournment sine die of**
28 **the regular session, to the extent that the excess does not exceed six**
29 **percent of the estimate, the excess shall be transferred to the Oregon**
30 **Rainy Day Fund established by section 15, Article IX of the Oregon**
31 **Constitution.**

1 (b) If the revenues received from General Fund revenue sources, exclusive
2 of those described in subsection (3) of this section, during the biennium ex-
3 ceed the amounts estimated to be received from such sources for the
4 biennium, as estimated after adjournment sine die of the regular session, by
5 [two percent or] more **than six percent**, there shall be refunded from per-
6 sonal income tax revenues an amount equal to the total amount of [that ex-
7 cess] **the excess above six percent**, reduced by the cost certified by the
8 Department of Revenue under ORS 291.351 as being allocable to payments
9 described under this subsection. The excess amount to be refunded shall be
10 paid to personal income taxpayers in a percentage amount of prior year
11 personal income tax liability as determined under subsection [(6)] (5) of this
12 section.

13 [(5)(a) If there is an excess to be credited under subsection (3) of this sec-
14 tion, on or before October 1, following the end of each biennium, the Oregon
15 Department of Administrative Services shall determine and certify to the De-
16 partment of Revenue the percentage amount of credit for purposes of subsection
17 (3) of this section. The percentage amount determined shall be a percentage
18 amount to the nearest one-tenth of a percent that will distribute the excess to
19 be credited to corporate excise and income taxpayers.]

20 [(b) The percentage amount shall equal the amount distributed under sub-
21 section (3) of this section divided by the estimated total corporate income and
22 excise tax liability for all corporate income and excise taxpayers for tax years
23 beginning in the calendar year immediately preceding the calendar year in
24 which the excess is determined.]

25 [(c) The amount of the surplus credit is determined by multiplying the
26 percentage amount determined under paragraph (b) of this subsection by the
27 total amount of a corporate income or excise taxpayer's tax liability for the tax
28 year beginning in the calendar year immediately preceding the calendar year
29 in which the excess is determined in order to calculate the amount to be
30 credited to the taxpayer.]

31 [(d) The credit shall be determined based on the tax liability as shown on

1 *the return of the taxpayer or as corrected by the Department of Revenue.]*

2 *[(e) The credit shall be computed after the allowance of a credit provided*
3 *under ORS 316.082, 316.131 or 316.292, but before the allowance of any other*
4 *credit or offset against tax liability allowed or allowable under any provision*
5 *of law of this state, and before the application of estimated tax payments,*
6 *withholding or other advance tax payments.]*

7 *[(f) If a credit applied against tax liability as described in paragraph (e)*
8 *of this subsection reduces tax liability to zero and an amount of the credit*
9 *remains unused, the remaining unused amount shall be carried forward and*
10 *applied against tax liability as prescribed in paragraph (e) of this subsection*
11 *in the succeeding tax year. Following application of the credit against tax li-*
12 *ability in a succeeding tax year, any amount continuing to remain unused*
13 *shall be carried forward and applied against tax liability in a succeeding tax*
14 *year until all remaining amounts of unused credit are offset against tax li-*
15 *ability.]*

16 *[(g) Notwithstanding paragraph (e) of this subsection, if an excess is cred-*
17 *ited under subsection (3) of this section for a tax year and an unused credit*
18 *amount from a prior tax year is carried forward to the tax year as prescribed*
19 *under paragraph (f) of this subsection, the amount of the carryforward credit*
20 *shall be applied against tax liability prior to applying the new credit.]*

21 *[(h) The Department of Revenue may prescribe by rule the manner of cal-*
22 *culating and claiming a credit if the filing status of a corporation changes*
23 *between the tax year described in paragraph (b) of this subsection and the*
24 *succeeding tax year.]*

25 **[(6)(a)] (5)(a)** If there is an excess to be refunded under subsection (4) of
26 this section, on or before September 15, following the end of each biennium,
27 the Oregon Department of Administrative Services shall determine and cer-
28 tify to the Department of Revenue the percentage amount of refund payment
29 for purposes of subsection (4) of this section. The percentage amount so de-
30 termined shall be a percentage amount to the nearest one-hundredth of a
31 percent that will distribute the excess to be refunded to personal income

1 taxpayers under subsection (4) of this section. The percentage amount shall
2 equal the amount distributed under subsection (4) of this section divided by
3 the estimated total personal income tax liability for all personal income
4 taxpayers for tax years beginning in the calendar year immediately preceding
5 the calendar year in which the excess is determined.

6 (b) The Department of Revenue shall multiply the percentage amount de-
7 termined under paragraph (a) of this subsection by the total amount of a
8 personal income taxpayer's tax liability for the tax year beginning in the
9 calendar year immediately preceding the calendar year in which the excess
10 is determined in order to calculate the amount of the refund to be made to
11 the taxpayer. For purposes of this paragraph, the taxpayer's tax liability is
12 the amount as shown on the return of the taxpayer or as corrected by the
13 Department of Revenue, and is determined:

14 (A) After the allowance of a credit provided under ORS 316.082, 316.131
15 or 316.292;

16 (B) Before the allowance of any other credit or offset against tax liability
17 allowed or allowable on the return for the tax year; and

18 (C) Before the application of estimated tax payments, withholding or
19 other advance tax payments.

20 (c) The refund described under this subsection shall be mailed by the
21 Department of Revenue to personal income taxpayers eligible for the pay-
22 ment on or before December 15 following the end of the biennium for which
23 the payment described under this subsection is being made.

24 (d) Notwithstanding paragraph (c) of this subsection, the Department of
25 Revenue shall mail the refund at the earliest date of practicable convenience
26 in the case of a return:

27 (A) For a tax year beginning in the calendar year immediately preceding
28 the calendar year in which the excess is determined for which refund is being
29 made; and

30 (B) That is first filed on or after August 15 after the end of the biennium.

31 [(7)] (6) No refund shall be made to a taxpayer if, after making the cal-

1 culation described under subsection [(6)] (5) of this section, the amount cal-
2 culated is less than \$1.

3 [(8)] (7) For purposes of ORS chapters 305 and 314 to 318, refunds issued
4 under subsection [(6)] (5) of this section are refunds of an overpayment of
5 tax imposed under ORS chapter 316, but do not bear interest.

6 **SECTION 4.** ORS 305.792 is amended to read:

7 305.792. (1) The Department of Revenue shall cause a checkoff box to be
8 printed on the personal income and corporate income or excise tax returns
9 for the appropriate tax year, by which a taxpayer may indicate that a surplus
10 refund payment [*or credit*] that the taxpayer may otherwise be entitled to
11 under ORS 291.349 shall instead be used for funding education.

12 (2)(a) A personal income taxpayer may elect to donate a surplus refund
13 payment to be made under ORS 291.349 to public elementary and secondary
14 school education. The taxpayer may make the election by checking the ap-
15 propriate checkoff box on the taxpayer's return indicating the taxpayer's
16 intention to donate the surplus refund payment to public elementary and
17 secondary education.

18 (b) Once made, the election is irrevocable for any surplus refund payments
19 received until a subsequent return is filed for a later tax year, and on which
20 the checkoff box is not checked.

21 [(3)(a) *A corporate excise or income taxpayer may elect to not claim a sur-*
22 *plus refund credit that the taxpayer would otherwise be entitled to pursuant*
23 *to ORS 291.349, in order to achieve a corresponding transfer of such moneys*
24 *from the General Fund to the State School Fund for the support of public el-*
25 *ementary and secondary school education. The taxpayer may make the election*
26 *by checking the appropriate checkoff box on the taxpayer's return and by not*
27 *using the surplus refund credit percentage to reduce the taxpayer's tax liabil-*
28 *ity.*]

29 [(b) *A taxpayer that checks the appropriate checkoff box indicating that the*
30 *credit will not be claimed but that nevertheless claims the credit in determin-*
31 *ing the taxpayer's tax liability shall be considered to have not made the*

1 *election under this subsection.]*

2 *[(c) The election to not claim a credit under this subsection may not be re-*
3 *voked by filing an amended return.]*

4 *[(4)] (3) After the determination that surplus refund payments are to be*
5 *made under ORS 291.349 (4) and [(6)] (5), the department shall determine the*
6 *total amount of such payments for which an election to donate to public el-*
7 *ementary and secondary education has been made and shall certify this*
8 *amount to the State Treasurer. Following the department's certification to*
9 *the State Treasurer, an election to donate that biennium's surplus refund*
10 *payments under subsection (2) of this section is irrevocable.*

11 *[(5) Following the determination to credit corporate income and excise taxes*
12 *pursuant to ORS 291.349 (3) and (5), the department shall annually certify the*
13 *total amount of allowable credits that have not been claimed pursuant to an*
14 *election made under subsection (3) of this section. The certification shall be*
15 *made on or before December 31 of each year, until the tax year for which the*
16 *credit would otherwise be claimed becomes a closed tax year.]*

17 **SECTION 5.** ORS 293.146 is amended to read:

18 293.146. (1) As used in this section:

19 (a) "Ending balance" means the difference between the amount of General
20 Fund revenues collected during a biennium and the amount of General Fund
21 appropriations for the biennium.

22 (b) "General Fund appropriations" means the amount of moneys appro-
23 priated from the General Fund for a biennium in the legislatively approved
24 budget for the biennium, minus the amount of any General Fund appropri-
25 ation balances for that biennium that revert to the General Fund under ORS
26 293.190.

27 (c) "Legislatively approved budget" has the meaning given that term in
28 ORS 291.002.

29 (2) Except as provided in ORS 293.148, as soon as possible after the ending
30 balance for a biennium is determined, an amount equal to one percent of the
31 amount of General Fund appropriations for that biennium shall be trans-

1 ferred to the Oregon Rainy Day Fund established by [ORS 293.144] **section**
2 **15, Article IX, Oregon Constitution.** If the ending balance does not equal
3 or exceed one percent of the amount of General Fund appropriations, an
4 amount equal to the ending balance shall be transferred to the Oregon Rainy
5 Day Fund.

6 **SECTION 6.** ORS 293.148 is amended to read:

7 293.148. (1) If the moneys in the Oregon Rainy Day Fund established by
8 [ORS 293.144] **section 15, Article IX, Oregon Constitution,** just prior to
9 the time of a transfer scheduled under ORS [293.144 (3) or] 293.146 equal at
10 least [7-1/2] **12** percent of the amount of General Fund revenues collected
11 during the prior biennium, moneys that would otherwise be transferred to
12 the Oregon Rainy Day Fund shall be deposited in the General Fund.

13 (2) If the moneys in the Oregon Rainy Day Fund just prior to the time
14 of a transfer scheduled under ORS [293.144 (3) or] 293.146 do not equal at
15 least [7-1/2] **12** percent of the amount of General Fund revenues collected
16 during the prior biennium, the transfer to the Oregon Rainy Day Fund shall
17 be made regardless of whether that transfer increases the amount in the
18 Oregon Rainy Day Fund to at least [7-1/2] **12** percent of the amount of Gen-
19 eral Fund revenues collected during the prior biennium.

20 **SECTION 7.** ORS 317.853 is amended to read:

21 317.853. (1) For tax years beginning on or after January 1, 2013, any rev-
22 enue that is received as a result of a rate of tax above six and six-tenths
23 percent imposed under this chapter and that is in excess of the revenue that
24 would be received under this chapter at a rate of six and six-tenths percent
25 shall be deposited into the Oregon Rainy Day Fund established by [ORS
26 293.144] **section 15, Article IX, Oregon Constitution.**

27 (2) Before the end of each biennium, beginning with the biennium ending
28 on June 30, 2015, the Department of Revenue shall estimate the revenue de-
29 scribed in subsection (1) of this section that is received during the biennium.
30 An amount equal to that estimate shall be transferred into the Oregon Rainy
31 Day Fund established by [ORS 293.144] **section 15, Article IX, Oregon**

1 **Constitution**, on or before June 30 of each odd-numbered year.

2 **SECTION 8.** ORS 318.074 is amended to read:

3 318.074. (1) For tax years beginning on or after January 1, 2013, any rev-
4 enue that is received as a result of a rate of tax above six and six-tenths
5 percent imposed under this chapter and that is in excess of the revenue that
6 would be received under this chapter at a rate of six and six-tenths percent
7 shall be deposited into the Oregon Rainy Day Fund established by [*ORS*
8 *293.144*] **section 15, Article IX, Oregon Constitution.**

9 (2) Before the end of each biennium, beginning with the biennium ending
10 on June 30, 2015, the Department of Revenue shall estimate the revenue de-
11 scribed in subsection (1) of this section that is received during the biennium.
12 An amount equal to that estimate shall be transferred into the Oregon Rainy
13 Day Fund established by [*ORS 293.144*] **section 15, Article IX, Oregon**
14 **Constitution**, on or before June 30 of each odd-numbered year.

15 **SECTION 9.** ORS 293.144 is repealed.

16 **SECTION 10.** The Oregon Rainy Day Fund established by section 15,
17 Article IX, Oregon Constitution, is intended to be a continuation of
18 the Oregon Rainy Day Fund established by ORS 293.144. Moneys con-
19 tained on the effective date of this 2011 Act in the Oregon Rainy Day
20 Fund established by ORS 293.144 shall remain in the Oregon Rainy Day
21 Fund established by section 15, Article IX, Oregon Constitution.

22 **SECTION 11.** This 2011 Act does not become effective unless the
23 amendment to the Oregon Constitution proposed by _____ Joint Re-
24 solution _____ (2011) (LC 3597) is approved by the people at the regular
25 general election held in November 2012. This 2011 Act takes effect on
26 the effective date of that amendment.

27