

**A-Engrossed**  
**Senate Bill 754**

Ordered by the Senate May 9  
Including Senate Amendments dated May 9

Sponsored by COMMITTEE ON FINANCE AND REVENUE

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

*[Establishes 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.]*

**Establishes within Emergency Reserve Fund, established in Senate Joint Resolution 26 (2011), Higher Education Stability Subaccount. Establishes Higher Education Capital Improvement and Maintenance Subaccount within Higher Education Stability Subaccount. Authorizes, upon making certain findings and passing with three-fifths majority vote, Legislative Assembly to appropriate moneys from subaccounts for purposes of benefiting higher education institutions and activities, community colleges authorized by law to receive state aid and capital improvements or deferred maintenance at Oregon University System or community college facilities.**

**Implements Senate Joint Resolution 26 (2011) by changing statutory references to Oregon Rainy Day Fund to Emergency Reserve Fund. Repeals obsolete statutory provisions relating to Oregon Rainy Day Fund. Provides that surpluses of personal income tax revenues in excess of two percent of forecast revenues are equally deposited in Emergency Reserve Fund and returned to personal income taxpayers. Provides that surpluses of corporate excise or income tax revenues in excess of two percent be deposited in Emergency Reserve Fund.**

Takes effect only if Senate Joint Resolution [30] 26 (2011) is approved by people at next regular general election. Takes effect on effective date of constitutional amendment proposed in Senate Joint Resolution [30] 26 (2011).

**A BILL FOR AN ACT**

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

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

5 **SECTION 1. (1) The Higher Education Stability Subaccount is established as a subaccount**  
6 **in the Emergency Reserve Fund established by section 15, Article IX of the Oregon Consti-**  
7 **tution. Moneys in the Higher Education Stability Subaccount may be appropriated only for**  
8 **purposes that will benefit higher education institutions, higher education activities or com-**  
9 **munity colleges authorized by law to receive state aid.**

10 **(2) The Legislative Assembly may appropriate moneys from the Higher Education Sta-**  
11 **bility Subaccount only if the appropriation is approved by three-fifths of the members serving**  
12 **in each house of the Legislative Assembly and the Legislative Assembly finds one of the fol-**  
13 **lowing:**

14 **(a) That the last quarterly economic and revenue forecast for a biennium indicates that**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 moneys available to the General Fund for the next biennium will be at least three percent  
2 less than appropriations from the General Fund for the current biennium;

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

5 (c) That a quarterly economic and revenue forecast projects that revenues in the General  
6 Fund in the current biennium will be at least two percent below what the revenues were  
7 projected to be in the revenue forecast on which the legislatively adopted budget for the  
8 current biennium was based.

9 (3) Once each month, in the manner provided by law, the Oregon Department of Admin-  
10 istrative Services shall calculate the amount of General Fund interest that is attributable  
11 to moneys in the Higher Education Stability Subaccount. Except as provided in section 2 of  
12 this 2011 Act, the amount calculated under this subsection shall be transferred to the Higher  
13 Education Stability Subaccount.

14 (4) As used in this section, “legislatively adopted budget” means the budget enacted by  
15 the Legislative Assembly during an odd-numbered year regular session.

16 **SECTION 2.** (1) There is created a Higher Education Capital Improvement and Mainte-  
17 nance Subaccount within the Higher Education Stability Subaccount. If the moneys in the  
18 Higher Education Stability Subaccount just prior to the time of a transfer scheduled under  
19 section 1 of this 2011 Act or ORS 291.349 equal at least 15 percent of the amount of General  
20 Fund appropriations made to the Oregon University System and for community colleges  
21 during the prior biennium, moneys that would otherwise be transferred to the Higher Edu-  
22 cation Stability Subaccount shall be deposited in the Higher Education Capital Improvement  
23 and Maintenance Subaccount. Moneys in the Higher Education Capital Improvement and  
24 Maintenance Subaccount may be appropriated only for the purposes of capital improvements  
25 or deferred maintenance at Oregon University System facilities or community college facili-  
26 ties.

27 (2) If the moneys in the Higher Education Stability Subaccount just prior to the time of  
28 a transfer scheduled under section 1 of this 2011 Act or ORS 291.349 do not equal at least 15  
29 percent of the amount of General Fund appropriations made to the Oregon University Sys-  
30 tem and for community colleges during the prior biennium, the transfer to the Higher Edu-  
31 cation Stability Subaccount shall be made regardless of whether that transfer increases the  
32 amount in the Higher Education Stability Subaccount to at least 15 percent of the amount  
33 of General Fund appropriations made to the Oregon University System and for community  
34 colleges during the prior biennium.

35 (3) As used in this section:

36 (a) “General Fund appropriations” means the amount of moneys appropriated from the  
37 General Fund for a biennium in the legislatively approved budget for the biennium, minus  
38 the amount of any General Fund appropriation balances for that biennium that revert to the  
39 General Fund as provided by law.

40 (b) “Legislatively adopted budget” means the budget enacted by the Legislative Assembly  
41 during an odd-numbered year regular session.

42 (c) “Legislatively approved budget” means the legislatively adopted budget as modified  
43 by the joint committee referred to in section 3, Article III of this Constitution, or by the  
44 Legislative Assembly meeting in regular or special session.

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

1       291.349. (1) As soon as practicable after adjournment sine die of the **odd-numbered year** regu-  
 2 lar session of the Legislative Assembly, the Oregon Department of Administrative Services shall  
 3 report to the Emergency Board the estimate as of July 1 of the first year of the biennium of General  
 4 Fund and State Lottery Fund revenues that will be received by the state during that biennium. The  
 5 Oregon Department of Administrative Services shall base its estimate on the last forecast given to  
 6 the Legislative Assembly before adjournment sine die of the **odd-numbered year** regular session  
 7 on which the printed, adopted budget prepared in the Oregon Department of Administrative Services  
 8 is based, adjusted only insofar as necessary to reflect changes in laws adopted at that session. The  
 9 report shall contain the estimated revenues from corporate income and excise taxes separately from  
 10 the estimated revenues from other General Fund sources. The Oregon Department of Administrative  
 11 Services may revise the estimate if necessary following adjournment sine die of [*any special or*  
 12 *emergency*] **an even-numbered year regular session or special** session of the Legislative Assembly  
 13 but any revision does not affect the basis of the computation described in subsection (3) or (4) of this  
 14 section.

15       (2) As soon as practicable after the end of the biennium, the Oregon Department of Adminis-  
 16 trative Services shall report to the Emergency Board, or the Legislative Assembly if it is in session,  
 17 the amount of General Fund revenues collected as of the last June 30 of the preceding biennium.  
 18 The report shall contain the collections from corporate income and excise taxes separately from  
 19 collections from other sources.

20       (3) If the revenues received from the corporate income and excise taxes during the biennium  
 21 exceed the amounts estimated to be received from such taxes for the biennium[*, as estimated after*  
 22 *adjournment sine die of the regular session, by two percent or more,*] **by two percent or more, as**  
 23 **estimated after adjournment sine die of an odd-numbered year regular session,** the total  
 24 amount of that excess shall be [*credited to corporate income and excise taxpayers in a percentage*  
 25 *amount of prior year corporate excise and income tax liability as determined under subsection (5) of*  
 26 *this section. However, no credit shall be allowed against tax liability imposed by ORS 317.090*]  
 27 **transferred to the Higher Education Stability Subaccount established by section 1 of this 2011**  
 28 **Act in the Emergency Reserve Fund established by section 15, Article IX of the Oregon**  
 29 **Constitution.**

30       (4) If the revenues received from General Fund revenue sources, exclusive of those described in  
 31 subsection (3) of this section, during the biennium exceed the amounts estimated to be received from  
 32 such sources for the biennium[*, as estimated after adjournment sine die of the regular session, by two*  
 33 *percent or more, there shall be refunded from personal income tax revenues an amount equal to the*  
 34 *total amount of that excess*] **by two percent or more, as estimated after adjournment sine die**  
 35 **of an odd-numbered year regular session, one-half of the total amount of the excess shall be**  
 36 **transferred to the Emergency Reserve Fund established by section 15, Article IX of the**  
 37 **Oregon Constitution, and one-half of the total amount of the excess shall be returned to**  
 38 **personal income taxpayers,** reduced by the cost certified by the Department of Revenue under  
 39 ORS 291.351 as being allocable to payments described under this subsection. The excess amount to  
 40 be refunded shall be paid to personal income taxpayers in a percentage amount of prior year per-  
 41 sonal income tax liability as determined under subsection [(6)] (5) of this section.

42       [(5)(a) *If there is an excess to be credited under subsection (3) of this section, on or before October*  
 43 *1, following the end of each biennium, the Oregon Department of Administrative Services shall deter-*  
 44 *mine and certify to the Department of Revenue the percentage amount of credit for purposes of sub-*  
 45 *section (3) of this section. The percentage amount determined shall be a percentage amount to the*

1 nearest one-tenth of a percent that will distribute the excess to be credited to corporate excise and in-  
2 come taxpayers.]

3 [(b) The percentage amount shall equal the amount distributed under subsection (3) of this section  
4 divided by the estimated total corporate income and excise tax liability for all corporate income and  
5 excise taxpayers for tax years beginning in the calendar year immediately preceding the calendar year  
6 in which the excess is determined.]

7 [(c) The amount of the surplus credit is determined by multiplying the percentage amount deter-  
8 mined under paragraph (b) of this subsection by the total amount of a corporate income or excise  
9 taxpayer's tax liability for the tax year beginning in the calendar year immediately preceding the cal-  
10 endar year in which the excess is determined in order to calculate the amount to be credited to the  
11 taxpayer.]

12 [(d) The credit shall be determined based on the tax liability as shown on the return of the taxpayer  
13 or as corrected by the Department of Revenue.]

14 [(e) The credit shall be computed after the allowance of a credit provided under ORS 316.082,  
15 316.131 or 316.292, but before the allowance of any other credit or offset against tax liability allowed  
16 or allowable under any provision of law of this state, and before the application of estimated tax pay-  
17 ments, withholding or other advance tax payments.]

18 [(f) If a credit applied against tax liability as described in paragraph (e) of this subsection reduces  
19 tax liability to zero and an amount of the credit remains unused, the remaining unused amount shall  
20 be carried forward and applied against tax liability as prescribed in paragraph (e) of this subsection  
21 in the succeeding tax year. Following application of the credit against tax liability in a succeeding tax  
22 year, any amount continuing to remain unused shall be carried forward and applied against tax li-  
23 ability in a succeeding tax year until all remaining amounts of unused credit are offset against tax li-  
24 ability.]

25 [(g) Notwithstanding paragraph (e) of this subsection, if an excess is credited under subsection (3)  
26 of this section for a tax year and an unused credit amount from a prior tax year is carried forward  
27 to the tax year as prescribed under paragraph (f) of this subsection, the amount of the carryforward  
28 credit shall be applied against tax liability prior to applying the new credit.]

29 [(h) The Department of Revenue may prescribe by rule the manner of calculating and claiming a  
30 credit if the filing status of a corporation changes between the tax year described in paragraph (b) of  
31 this subsection and the succeeding tax year.]

32 [(6)(a)] **(5)(a)** If there is an excess to be refunded to **personal income taxpayers** under sub-  
33 section (4) of this section, on or before September 15, following the end of each biennium, the  
34 Oregon Department of Administrative Services shall determine and certify to the Department of  
35 Revenue the percentage amount of refund payment for purposes of subsection (4) of this section. The  
36 percentage amount so determined shall be a percentage amount to the nearest one-hundredth of a  
37 percent that will distribute the excess to be refunded to personal income taxpayers under subsection  
38 (4) of this section. The percentage amount shall equal the amount distributed to **personal income**  
39 **taxpayers** under subsection (4) of this section divided by the estimated total personal income tax  
40 liability for all personal income taxpayers for tax years beginning in the calendar year immediately  
41 preceding the calendar year in which the excess is determined.

42 (b) The Department of Revenue shall multiply the percentage amount determined under para-  
43 graph (a) of this subsection by the total amount of a personal income taxpayer's tax liability for the  
44 tax year beginning in the calendar year immediately preceding the calendar year in which the ex-  
45 cess is determined in order to calculate the amount of the refund to be made to the taxpayer. For

1 purposes of this paragraph, the taxpayer's tax liability is the amount as shown on the return of the  
2 taxpayer or as corrected by the Department of Revenue, and is determined:

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

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

6 (C) Before the application of estimated tax payments, withholding or other advance tax pay-  
7 ments.

8 (c) The refund described under this subsection shall be mailed by the Department of Revenue  
9 to personal income taxpayers eligible for the payment on or before December 15 following the end  
10 of the biennium for which the payment described under this subsection is being made.

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

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

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

16 [(7)] (6) No refund shall be made to a taxpayer if, after making the calculation described under  
17 subsection [(6)] (5) of this section, the amount calculated is less than \$1.

18 [(8)] (7) For purposes of ORS chapters 305 and 314 to 318, refunds issued under subsection [(6)]  
19 (5) of this section are refunds of an overpayment of tax imposed under ORS chapter 316, but do not  
20 bear interest.

21 **SECTION 4.** ORS 293.146 is amended to read:

22 293.146. (1) As used in this section:

23 (a) "Ending balance" means the difference between the amount of General Fund revenues col-  
24 lected during a biennium and the amount of General Fund appropriations for the biennium.

25 (b) "General Fund appropriations" means the amount of moneys appropriated from the General  
26 Fund for a biennium in the legislatively approved budget for the biennium, minus the amount of any  
27 General Fund appropriation balances for that biennium that revert to the General Fund under ORS  
28 293.190.

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

30 (2) Except as provided in [ORS 293.148] **section 15 (5), Article IX of the Oregon**  
31 **Constitution**, as soon as possible after the ending balance for a biennium is determined, an amount  
32 equal to one percent of the amount of General Fund appropriations for that biennium shall be  
33 transferred to the [Oregon Rainy Day Fund established by ORS 293.144] **Emergency Reserve Fund**  
34 **established by section 15, Article IX of the Oregon Constitution**. If the ending balance does not  
35 equal or exceed one percent of the amount of General Fund appropriations, an amount equal to the  
36 ending balance shall be transferred to the [Oregon Rainy Day Fund] **Emergency Reserve Fund**.

37 **SECTION 5.** ORS 305.792 is amended to read:

38 305.792. (1) The Department of Revenue shall cause a checkoff box to be printed on the personal  
39 income and corporate income or excise tax returns for the appropriate tax year, by which a tax-  
40 payer may indicate that a surplus refund payment [or credit] that the taxpayer may otherwise be  
41 entitled to under ORS 291.349 shall instead be used for funding education.

42 (2)(a) A personal income taxpayer may elect to donate a surplus refund payment to be made  
43 under ORS 291.349 to public elementary and secondary school education. The taxpayer may make  
44 the election by checking the appropriate checkoff box on the taxpayer's return indicating the  
45 taxpayer's intention to donate the surplus refund payment to public elementary and secondary edu-

1 cation.

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

4 [(3)(a) *A corporate excise or income taxpayer may elect to not claim a surplus refund credit that*  
5 *the taxpayer would otherwise be entitled to pursuant to ORS 291.349, in order to achieve a corre-*  
6 *sponding transfer of such moneys from the General Fund to the State School Fund for the support of*  
7 *public elementary and secondary school education. The taxpayer may make the election by checking the*  
8 *appropriate checkoff box on the taxpayer's return and by not using the surplus refund credit percentage*  
9 *to reduce the taxpayer's tax liability.*]

10 [(b) *A taxpayer that checks the appropriate checkoff box indicating that the credit will not be*  
11 *claimed but that nevertheless claims the credit in determining the taxpayer's tax liability shall be con-*  
12 *sidered to have not made the election under this subsection.*]

13 [(c) *The election to not claim a credit under this subsection may not be revoked by filing an*  
14 *amended return.*]

15 [(4)] (3) After the determination that surplus refund payments are to be made under ORS 291.349  
16 (4) and [(6)] (5), the department shall determine the total amount of such payments for which an  
17 election to donate to public elementary and secondary education has been made and shall certify  
18 this amount to the State Treasurer. Following the department's certification to the State Treasurer,  
19 an election to donate that biennium's surplus refund payments under subsection (2) of this section  
20 is irrevocable.

21 [(5) *Following the determination to credit corporate income and excise taxes pursuant to ORS*  
22 *291.349 (3) and (5), the department shall annually certify the total amount of allowable credits that have*  
23 *not been claimed pursuant to an election made under subsection (3) of this section. The certification*  
24 *shall be made on or before December 31 of each year, until the tax year for which the credit would*  
25 *otherwise be claimed becomes a closed tax year.*]

26 **SECTION 6.** ORS 317.853 is amended to read:

27 317.853. (1) For tax years beginning on or after January 1, 2013, any revenue that is received  
28 as a result of a rate of tax above six and six-tenths percent imposed under this chapter and that is  
29 in excess of the revenue that would be received under this chapter at a rate of six and six-tenths  
30 percent shall be deposited into the [*Oregon Rainy Day Fund*] **Emergency Reserve Fund** established  
31 by [*ORS 293.144*] **section 15, Article IX of the Oregon Constitution.**

32 (2) Before the end of each biennium, beginning with the biennium ending on June 30, 2015, the  
33 Department of Revenue shall estimate the revenue described in subsection (1) of this section that  
34 is received during the biennium. An amount equal to that estimate shall be transferred into the  
35 [*Oregon Rainy Day Fund*] **Emergency Reserve Fund** established by [*ORS 293.144*] **section 15,**  
36 **Article IX of the Oregon Constitution,** on or before June 30 of each odd-numbered year.

37 **SECTION 7.** ORS 318.074 is amended to read:

38 318.074. (1) For tax years beginning on or after January 1, 2013, any revenue that is received  
39 as a result of a rate of tax above six and six-tenths percent imposed under this chapter and that is  
40 in excess of the revenue that would be received under this chapter at a rate of six and six-tenths  
41 percent shall be deposited into the [*Oregon Rainy Day Fund*] **Emergency Reserve Fund** established  
42 by [*ORS 293.144*] **section 15, Article IX of the Oregon Constitution.**

43 (2) Before the end of each biennium, beginning with the biennium ending on June 30, 2015, the  
44 Department of Revenue shall estimate the revenue described in subsection (1) of this section that  
45 is received during the biennium. An amount equal to that estimate shall be transferred into the

1 [*Oregon Rainy Day Fund*] **Emergency Reserve Fund** established by [ORS 293.144] **section 15,**  
2 **Article IX of the Oregon Constitution**, on or before June 30 of each odd-numbered year.

3 **SECTION 8.** Pursuant to section 15 (3), Article IX of the Oregon Constitution, once each  
4 month, the Oregon Department of Administrative Services shall calculate the amount of  
5 General Fund interest that is attributable to moneys in the Emergency Reserve Fund, ex-  
6 clusive of any subaccount in the Emergency Reserve Fund. Except as provided in section  
7 15 (5), Article IX of the Oregon Constitution, the amount calculated under this section shall  
8 be transferred to the Emergency Reserve Fund.

9 **SECTION 9.** Sections 1, 2 and 8 of this 2011 Act, the amendments to ORS 291.349, 293.146,  
10 305.792, 317.853 and 318.074 by sections 3 to 7 of this 2011 Act and the repeal of ORS 293.144  
11 and 293.148 by section 10 of this 2011 Act apply to biennia beginning on or after July 1, 2011.

12 **SECTION 10.** ORS 293.144 and 293.148 are repealed.

13 **SECTION 11.** The Emergency Reserve Fund established by section 15, Article IX of the  
14 Oregon Constitution, is intended to be a continuation of the Oregon Rainy Day Fund estab-  
15 lished by ORS 293.144. Moneys contained on the effective date of this 2011 Act in the Oregon  
16 Rainy Day Fund established by ORS 293.144 are considered to be moneys in the Emergency  
17 Reserve Fund established by section 15, Article IX of the Oregon Constitution.

18 **SECTION 12.** This 2011 Act does not become effective unless the amendment to the  
19 Oregon Constitution proposed by Senate Joint Resolution 26 (2011) is approved by the people  
20 at the regular general election held in November 2012. This 2011 Act takes effect on the ef-  
21 fective date of that amendment.

22