

Senate Bill 754

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 **as introduced**.

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

A BILL FOR AN ACT

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

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

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

9 (2) The Legislative Assembly may appropriate moneys from the Oregon Universities
10 Stability Fund only if the appropriation is approved by three-fifths of the members serving
11 in each house of the Legislative Assembly and the Legislative Assembly finds one of the fol-
12 lowing:

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

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

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

22 (3) Once each month, in the manner provided by law, the Oregon Department of Admin-
23 istrative Services shall calculate the amount of General Fund interest that is attributable
24 to moneys in the Oregon Universities Stability Fund. Except as provided in section 2 of this
25 2011 Act, the amount calculated under this subsection shall be transferred to the Oregon

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 **Universities Stability Fund.**

2 (4) **The Legislative Assembly may not appropriate for any one biennium more than two-**
3 **thirds of the amount that is in the Oregon Universities Stability Fund at the beginning of**
4 **that biennium. If the appropriation is for a biennium that has not yet begun, the Legislative**
5 **Assembly may use as the base the most recent estimate of the amount that will be in the**
6 **Oregon Universities Stability Fund at the beginning of the biennium for which the appropri-**
7 **ation is made.**

8 (5) **As used in this section, “legislatively adopted budget” means the budget enacted by**
9 **the Legislative Assembly during a regular session.**

10 **SECTION 2. (1) There is created a Universities Capital Improvement and Maintenance**
11 **Subaccount within the Oregon Universities Stability Fund. If the moneys in the Oregon**
12 **Universities Stability Fund just prior to the time of a transfer scheduled under section 1 of**
13 **this 2011 Act or ORS 291.349 equal at least 15 percent of the amount of General Fund re-**
14 **venues appropriated to the Oregon University System during the prior biennium, moneys**
15 **that would otherwise be transferred to the Oregon Universities Stability Fund shall be de-**
16 **posited in the Universities Capital Improvement and Maintenance Subaccount. Moneys in the**
17 **subaccount may be appropriated only for the purposes of capital improvements or deferred**
18 **maintenance, as defined by law, at Oregon University System facilities. Section 1 (2) of this**
19 **2011 Act does not apply to appropriations of moneys in the subaccount.**

20 (2) **If the moneys in the Oregon Universities Stability Fund just prior to the time of a**
21 **transfer scheduled under section 1 of this 2011 Act or ORS 291.349 do not equal at least 15**
22 **percent of the amount of General Fund revenues appropriated to the Oregon University**
23 **System during the prior biennium, the transfer to the Oregon Universities Stability Fund**
24 **shall be made regardless of whether that transfer increases the amount in the Oregon Uni-**
25 **versities Stability Fund to at least 15 percent of the amount of General Fund revenues ap-**
26 **propriated to the Oregon University System during the prior biennium.**

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

28 291.349. (1) **As soon as practicable after adjournment sine die of the regular session of the**
29 **Legislative Assembly, the Oregon Department of Administrative Services shall report to the Emer-**
30 **gency Board the estimate as of July 1 of the first year of the biennium of General Fund and State**
31 **Lottery Fund revenues that will be received by the state during that biennium. The Oregon De-**
32 **partment of Administrative Services shall base its estimate on the last forecast given to the Legis-**
33 **lative Assembly before adjournment sine die of the regular session on which the printed, adopted**
34 **budget prepared in the Oregon Department of Administrative Services is based, adjusted only insofar**
35 **as necessary to reflect changes in laws adopted at that session. The report shall contain the esti-**
36 **imated revenues from corporate income and excise taxes separately from the estimated revenues from**
37 **other General Fund sources. The Oregon Department of Administrative Services may revise the es-**
38 **timate if necessary following adjournment sine die of any special or emergency session of the Leg-**
39 **islative Assembly but any revision does not affect the basis of the computation described in**
40 **subsection (3) or (4) of this section.**

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

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

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

9 (a) **If the revenues received from General Fund revenue sources, exclusive of those de-**
 10 **scribed in subsection (3) of this section, during the biennium exceed the amounts estimated**
 11 **to be received from such sources for the biennium, as estimated after adjournment sine die**
 12 **of the regular session, to the extent that the excess does not exceed six percent of the esti-**
 13 **mate, the excess shall be transferred to the Oregon Rainy Day Fund established by section**
 14 **15, Article IX of the Oregon Constitution.**

15 (b) If the revenues received from General Fund revenue sources, exclusive of those described
 16 in subsection (3) of this section, during the biennium exceed the amounts estimated to be received
 17 from such sources for the biennium, as estimated after adjournment sine die of the regular session,
 18 by [*two percent or*] more **than six percent**, there shall be refunded from personal income tax re-
 19 venues an amount equal to the total amount of [*that excess*] **the excess above six percent**, reduced
 20 by the cost certified by the Department of Revenue under ORS 291.351 as being allocable to pay-
 21 ments described under this subsection. The excess amount to be refunded shall be paid to personal
 22 income taxpayers in a percentage amount of prior year personal income tax liability as determined
 23 under subsection [(6)] **(5)** of this section.

24 [(5)(a) *If there is an excess to be credited under subsection (3) of this section, on or before October*
 25 *1, following the end of each biennium, the Oregon Department of Administrative Services shall deter-*
 26 *mine and certify to the Department of Revenue the percentage amount of credit for purposes of sub-*
 27 *section (3) of this section. The percentage amount determined shall be a percentage amount to the*
 28 *nearest one-tenth of a percent that will distribute the excess to be credited to corporate excise and in-*
 29 *come taxpayers.*]

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

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

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

41 [(e) *The credit shall be computed after the allowance of a credit provided under ORS 316.082,*
 42 *316.131 or 316.292, but before the allowance of any other credit or offset against tax liability allowed*
 43 *or allowable under any provision of law of this state, and before the application of estimated tax pay-*
 44 *ments, withholding or other advance tax payments.*]

45 [(f) *If a credit applied against tax liability as described in paragraph (e) of this subsection reduces*

1 *tax liability to zero and an amount of the credit remains unused, the remaining unused amount shall*
 2 *be carried forward and applied against tax liability as prescribed in paragraph (e) of this subsection*
 3 *in the succeeding tax year. Following application of the credit against tax liability in a succeeding tax*
 4 *year, any amount continuing to remain unused shall be carried forward and applied against tax li-*
 5 *ability in a succeeding tax year until all remaining amounts of unused credit are offset against tax li-*
 6 *ability.]*

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

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

14 *[(6)(a)] (5)(a) If there is an excess to be refunded under subsection (4) of this section, on or be-*
 15 *fore September 15, following the end of each biennium, the Oregon Department of Administrative*
 16 *Services shall determine and certify to the Department of Revenue the percentage amount of refund*
 17 *payment for purposes of subsection (4) of this section. The percentage amount so determined shall*
 18 *be a percentage amount to the nearest one-hundredth of a percent that will distribute the excess to*
 19 *be refunded to personal income taxpayers under subsection (4) of this section. The percentage*
 20 *amount shall equal the amount distributed under subsection (4) of this section divided by the esti-*
 21 *imated total personal income tax liability for all personal income taxpayers for tax years beginning*
 22 *in the calendar year immediately preceding the calendar year in which the excess is determined.*

23 (b) The Department of Revenue shall multiply the percentage amount determined under para-
 24 graph (a) of this subsection by the total amount of a personal income taxpayer's tax liability for the
 25 tax year beginning in the calendar year immediately preceding the calendar year in which the ex-
 26 cess is determined in order to calculate the amount of the refund to be made to the taxpayer. For
 27 purposes of this paragraph, the taxpayer's tax liability is the amount as shown on the return of the
 28 taxpayer or as corrected by the Department of Revenue, and is determined:

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

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

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

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

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

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

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

42 [(7)] (6) No refund shall be made to a taxpayer if, after making the calculation described under
 43 subsection [(6)] (5) of this section, the amount calculated is less than \$1.

44 [(8)] (7) For purposes of ORS chapters 305 and 314 to 318, refunds issued under subsection [(6)]
 45 (5) of this section are refunds of an overpayment of tax imposed under ORS chapter 316, but do not

1 bear interest.

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

3 305.792. (1) The Department of Revenue shall cause a checkoff box to be printed on the personal
4 income and corporate income or excise tax returns for the appropriate tax year, by which a tax-
5 payer may indicate that a surplus refund payment [*or credit*] that the taxpayer may otherwise be
6 entitled to under ORS 291.349 shall instead be used for funding education.

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

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

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

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

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

25 [(4)] (3) After the determination that surplus refund payments are to be made under ORS 291.349
26 (4) and [(6)] (5), the department shall determine the total amount of such payments for which an
27 election to donate to public elementary and secondary education has been made and shall certify
28 this amount to the State Treasurer. Following the department's certification to the State Treasurer,
29 an election to donate that biennium's surplus refund payments under subsection (2) of this section
30 is irrevocable.

31 [(5) *Following the determination to credit corporate income and excise taxes pursuant to ORS*
32 *291.349 (3) and (5), the department shall annually certify the total amount of allowable credits that have*
33 *not been claimed pursuant to an election made under subsection (3) of this section. The certification*
34 *shall be made on or before December 31 of each year, until the tax year for which the credit would*
35 *otherwise be claimed becomes a closed tax year.]*

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

37 293.146. (1) As used in this section:

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

40 (b) "General Fund appropriations" means the amount of moneys appropriated from the General
41 Fund for a biennium in the legislatively approved budget for the biennium, minus the amount of any
42 General Fund appropriation balances for that biennium that revert to the General Fund under ORS
43 293.190.

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

45 (2) Except as provided in ORS 293.148, as soon as possible after the ending balance for a

1 biennium is determined, an amount equal to one percent of the amount of General Fund appropri-
2 ations for that biennium shall be transferred to the Oregon Rainy Day Fund established by [ORS
3 293.144] **section 15, Article IX, Oregon Constitution**. If the ending balance does not equal or ex-
4 ceed one percent of the amount of General Fund appropriations, an amount equal to the ending
5 balance shall be transferred to the Oregon Rainy 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 [ORS 293.144] **section**
8 **15, Article IX, Oregon Constitution**, just prior to the time of a transfer scheduled under ORS
9 [293.144 (3) or] 293.146 equal at least [7-1/2] **12** percent of the amount of General Fund revenues
10 collected during the prior biennium, moneys that would otherwise be transferred to the Oregon
11 Rainy Day Fund shall be deposited in the General Fund.

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

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

19 317.853. (1) For tax years beginning on or after January 1, 2013, any revenue that is received
20 as a result of a rate of tax above six and six-tenths percent imposed under this chapter and that is
21 in excess of the revenue that would be received under this chapter at a rate of six and six-tenths
22 percent shall be deposited into the Oregon Rainy Day Fund established by [ORS 293.144] **section**
23 **15, Article IX, Oregon Constitution**.

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

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

30 318.074. (1) For tax years beginning on or after January 1, 2013, any revenue that is received
31 as a result of a rate of tax above six and six-tenths percent imposed under this chapter and that is
32 in excess of the revenue that would be received under this chapter at a rate of six and six-tenths
33 percent shall be deposited into the Oregon Rainy Day Fund established by [ORS 293.144] **section**
34 **15, Article IX, Oregon Constitution**.

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

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

41 **SECTION 10.** The Oregon Rainy Day Fund established by section 15, Article IX, Oregon
42 Constitution, is intended to be a continuation of the Oregon Rainy Day Fund established by
43 ORS 293.144. Moneys contained on the effective date of this 2011 Act in the Oregon Rainy
44 Day Fund established by ORS 293.144 shall remain in the Oregon Rainy Day Fund established
45 by section 15, Article IX, Oregon Constitution.

1 **SECTION 11.** This 2011 Act does not become effective unless the amendment to the
2 **Oregon Constitution proposed by Senate Joint Resolution 30 (2011) is approved by the people**
3 **at the regular general election held in November 2012. This 2011 Act takes effect on the ef-**
4 **fective date of that amendment.**

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