

## SENATE AMENDMENTS TO SENATE BILL 754

By COMMITTEE ON FINANCE AND REVENUE

May 9

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the line and line 3 and insert  
2 “291.349, 293.146, 305.792, 317.853 and 318.074; repealing ORS 293.144 and 293.148; and prescribing  
3 an effective date.”.

4 Delete lines 5 through 25 and delete pages 2 through 7 and insert:

5 **“SECTION 1. (1) The Higher Education Stability Subaccount is established as a subac-**  
6 **count in the Emergency Reserve Fund established by section 15, Article IX of the Oregon**  
7 **Constitution. Moneys in the Higher Education Stability Subaccount may be appropriated**  
8 **only for purposes that will benefit higher education institutions, higher education activities**  
9 **or community 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**  
15 **moneys available to the General Fund for the next biennium will be at least three percent**  
16 **less than appropriations from the General Fund for the current biennium;**

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

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

23 **“(3) Once each month, in the manner provided by law, the Oregon Department of Ad-**  
24 **ministrative Services shall calculate the amount of General Fund interest that is attributable**  
25 **to moneys in the Higher Education Stability Subaccount. Except as provided in section 2 of**  
26 **this 2011 Act, the amount calculated under this subsection shall be transferred to the Higher**  
27 **Education Stability Subaccount.**

28 **“(4) As used in this section, ‘legislatively adopted budget’ means the budget enacted by**  
29 **the Legislative Assembly during an odd-numbered year regular session.**

30 **“SECTION 2. (1) There is created a Higher Education Capital Improvement and Mainte-**  
31 **nance Subaccount within the Higher Education Stability Subaccount. If the moneys in the**  
32 **Higher Education Stability Subaccount just prior to the time of a transfer scheduled under**  
33 **section 1 of this 2011 Act or ORS 291.349 equal at least 15 percent of the amount of General**  
34 **Fund appropriations made to the Oregon University System and for community colleges**  
35 **during the prior biennium, moneys that would otherwise be transferred to the Higher Edu-**

1 cation Stability Subaccount shall be deposited in the Higher Education Capital Improvement  
2 and Maintenance Subaccount. Moneys in the Higher Education Capital Improvement and  
3 Maintenance Subaccount may be appropriated only for the purposes of capital improvements  
4 or deferred maintenance at Oregon University System facilities or community college facili-  
5 ties.

6 “(2) If the moneys in the Higher Education Stability Subaccount just prior to the time  
7 of a transfer scheduled under section 1 of this 2011 Act or ORS 291.349 do not equal at least  
8 15 percent of the amount of General Fund appropriations made to the Oregon University  
9 System and for community colleges during the prior biennium, the transfer to the Higher  
10 Education Stability Subaccount shall be made regardless of whether that transfer increases  
11 the amount in the Higher Education Stability Subaccount to at least 15 percent of the  
12 amount of General Fund appropriations made to the Oregon University System and for  
13 community colleges during the prior biennium.

14 “(3) As used in this section:

15 “(a) ‘General Fund appropriations’ means the amount of moneys appropriated from the  
16 General Fund for a biennium in the legislatively approved budget for the biennium, minus  
17 the amount of any General Fund appropriation balances for that biennium that revert to the  
18 General Fund as provided by law.

19 “(b) ‘Legislatively adopted budget’ means the budget enacted by the Legislative Assembly  
20 during an odd-numbered year regular session.

21 “(c) ‘Legislatively approved budget’ means the legislatively adopted budget as modified  
22 by the joint committee referred to in section 3, Article III of this Constitution, or by the  
23 Legislative Assembly meeting in regular or special session.

24 “SECTION 3. ORS 291.349 is amended to read:

25 “291.349. (1) As soon as practicable after adjournment sine die of the **odd-numbered year** reg-  
26 ular session of the Legislative Assembly, the Oregon Department of Administrative Services shall  
27 report to the Emergency Board the estimate as of July 1 of the first year of the biennium of General  
28 Fund and State Lottery Fund revenues that will be received by the state during that biennium. The  
29 Oregon Department of Administrative Services shall base its estimate on the last forecast given to  
30 the Legislative Assembly before adjournment sine die of the **odd-numbered year** regular session  
31 on which the printed, adopted budget prepared in the Oregon Department of Administrative Services  
32 is based, adjusted only insofar as necessary to reflect changes in laws adopted at that session. The  
33 report shall contain the estimated revenues from corporate income and excise taxes separately from  
34 the estimated revenues from other General Fund sources. The Oregon Department of Administrative  
35 Services may revise the estimate if necessary following adjournment sine die of [*any special or*  
36 *emergency*] **an even-numbered year regular session or special** session of the Legislative Assembly  
37 but any revision does not affect the basis of the computation described in subsection (3) or (4) of this  
38 section.

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

44 “(3) If the revenues received from the corporate income and excise taxes during the biennium  
45 exceed the amounts estimated to be received from such taxes for the biennium[, *as estimated after*

1 *adjournment sine die of the regular session, by two percent or more,]* **by two percent or more, as**  
2 **estimated after adjournment sine die of an odd-numbered year regular session,** the total  
3 amount of that excess shall be [*credited to corporate income and excise taxpayers in a percentage*  
4 *amount of prior year corporate excise and income tax liability as determined under subsection (5) of*  
5 *this section. However, no credit shall be allowed against tax liability imposed by ORS 317.090]*  
6 **transferred to the Higher Education Stability Subaccount established by section 1 of this 2011**  
7 **Act in the Emergency Reserve Fund established by section 15, Article IX of the Oregon**  
8 **Constitution.**

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

21 “[5)(a) *If there is an excess to be credited under subsection (3) of this section, on or before October*  
22 *1, following the end of each biennium, the Oregon Department of Administrative Services shall deter-*  
23 *mine and certify to the Department of Revenue the percentage amount of credit for purposes of sub-*  
24 *section (3) of this section. The percentage amount determined shall be a percentage amount to the*  
25 *nearest one-tenth of a percent that will distribute the excess to be credited to corporate excise and in-*  
26 *come taxpayers.]*

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

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

36 “[d) *The credit shall be determined based on the tax liability as shown on the return of the tax-*  
37 *payer or as corrected by the Department of Revenue.]*

38 “[e) *The credit shall be computed after the allowance of a credit provided under ORS 316.082,*  
39 *316.131 or 316.292, but before the allowance of any other credit or offset against tax liability allowed*  
40 *or allowable under any provision of law of this state, and before the application of estimated tax pay-*  
41 *ments, withholding or other advance tax payments.]*

42 “[f) *If a credit applied against tax liability as described in paragraph (e) of this subsection reduces*  
43 *tax liability to zero and an amount of the credit remains unused, the remaining unused amount shall*  
44 *be carried forward and applied against tax liability as prescribed in paragraph (e) of this subsection*  
45 *in the succeeding tax year. Following application of the credit against tax liability in a succeeding tax*

1 year, any amount continuing to remain unused shall be carried forward and applied against tax li-  
2 ability in a succeeding tax year until all remaining amounts of unused credit are offset against tax li-  
3 ability.]

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

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

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

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

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

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

30 “(C) Before the application of estimated tax payments, withholding or other advance tax pay-  
31 ments.

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

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

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

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

40 “[7)] (6) No refund shall be made to a taxpayer if, after making the calculation described under  
41 subsection [(6)] (5) of this section, the amount calculated is less than \$1.

42 “[8)] (7) For purposes of ORS chapters 305 and 314 to 318, refunds issued under subsection  
43 [(6)] (5) of this section are refunds of an overpayment of tax imposed under ORS chapter 316, but  
44 do not bear interest.

45 “**SECTION 4.** ORS 293.146 is amended to read:

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

2 “(a) ‘Ending balance’ means the difference between the amount of General Fund revenues col-  
3 lected during a biennium and the amount of General Fund appropriations for the biennium.

4 “(b) ‘General Fund appropriations’ means the amount of moneys appropriated from the General  
5 Fund for a biennium in the legislatively approved budget for the biennium, minus the amount of any  
6 General Fund appropriation balances for that biennium that revert to the General Fund under ORS  
7 293.190.

8 “(c) ‘Legislatively approved budget’ has the meaning given that term in ORS 291.002.

9 “(2) Except as provided in [ORS 293.148] **section 15 (5), Article IX of the Oregon Constitu-**  
10 **tion**, as soon as possible after the ending balance for a biennium is determined, an amount equal to  
11 one percent of the amount of General Fund appropriations for that biennium shall be transferred to  
12 the [Oregon Rainy Day Fund established by ORS 293.144] **Emergency Reserve Fund established**  
13 **by section 15, Article IX of the Oregon Constitution**. If the ending balance does not equal or  
14 exceed one percent of the amount of General Fund appropriations, an amount equal to the ending  
15 balance shall be transferred to the [Oregon Rainy Day Fund] **Emergency Reserve Fund**.

16 “**SECTION 5.** ORS 305.792 is amended to read:

17 “305.792. (1) The Department of Revenue shall cause a checkoff box to be printed on the per-  
18 sonal income and corporate income or excise tax returns for the appropriate tax year, by which a  
19 taxpayer may indicate that a surplus refund payment [or credit] that the taxpayer may otherwise be  
20 entitled to under ORS 291.349 shall instead be used for funding education.

21 “(2)(a) A personal income taxpayer may elect to donate a surplus refund payment to be made  
22 under ORS 291.349 to public elementary and secondary school education. The taxpayer may make  
23 the election by checking the appropriate checkoff box on the taxpayer’s return indicating the  
24 taxpayer’s intention to donate the surplus refund payment to public elementary and secondary edu-  
25 cation.

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

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

34 “[b) A taxpayer that checks the appropriate checkoff box indicating that the credit will not be  
35 claimed but that nevertheless claims the credit in determining the taxpayer’s tax liability shall be con-  
36 sidered to have not made the election under this subsection.]

37 “[c) The election to not claim a credit under this subsection may not be revoked by filing an  
38 amended return.]

39 “[4)] (3) After the determination that surplus refund payments are to be made under ORS  
40 291.349 (4) and [(6)] (5), the department shall determine the total amount of such payments for which  
41 an election to donate to public elementary and secondary education has been made and shall certify  
42 this amount to the State Treasurer. Following the department’s certification to the State Treasurer,  
43 an election to donate that biennium’s surplus refund payments under subsection (2) of this section  
44 is irrevocable.

45 “[5) Following the determination to credit corporate income and excise taxes pursuant to ORS

1 291.349 (3) and (5), the department shall annually certify the total amount of allowable credits that have  
2 not been claimed pursuant to an election made under subsection (3) of this section. The certification  
3 shall be made on or before December 31 of each year, until the tax year for which the credit would  
4 otherwise be claimed becomes a closed tax year.]

5 “**SECTION 6.** ORS 317.853 is amended to read:

6 “317.853. (1) For tax years beginning on or after January 1, 2013, any revenue that is received  
7 as a result of a rate of tax above six and six-tenths percent imposed under this chapter and that is  
8 in excess of the revenue that would be received under this chapter at a rate of six and six-tenths  
9 percent shall be deposited into the [Oregon Rainy Day Fund] **Emergency Reserve Fund** established  
10 by [ORS 293.144] **section 15, Article IX of the Oregon Constitution.**

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

16 “**SECTION 7.** ORS 318.074 is amended to read:

17 “318.074. (1) For tax years beginning on or after January 1, 2013, any revenue that is received  
18 as a result of a rate of tax above six and six-tenths percent imposed under this chapter and that is  
19 in excess of the revenue that would be received under this chapter at a rate of six and six-tenths  
20 percent shall be deposited into the [Oregon Rainy Day Fund] **Emergency Reserve Fund** established  
21 by [ORS 293.144] **section 15, Article IX of the Oregon Constitution.**

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

27 “**SECTION 8.** Pursuant to section 15 (3), Article IX of the Oregon Constitution, once each  
28 month, the Oregon Department of Administrative Services shall calculate the amount of  
29 General Fund interest that is attributable to moneys in the Emergency Reserve Fund, ex-  
30 clusive of any subaccount in the Emergency Reserve Fund. Except as provided in section  
31 15 (5), Article IX of the Oregon Constitution, the amount calculated under this section shall  
32 be transferred to the Emergency Reserve Fund.

33 “**SECTION 9.** Sections 1, 2 and 8 of this 2011 Act, the amendments to ORS 291.349, 293.146,  
34 305.792, 317.853 and 318.074 by sections 3 to 7 of this 2011 Act and the repeal of ORS 293.144  
35 and 293.148 by section 10 of this 2011 Act apply to biennia beginning on or after July 1, 2011.

36 “**SECTION 10.** ORS 293.144 and 293.148 are repealed.

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

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

