

**PROPOSED AMENDMENTS TO
SENATE BILL 754**

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the
2 line and line 3 and insert “291.349, 305.792, 317.853 and 318.074; repealing
3 ORS 293.144, 293.146 and 293.148; and prescribing 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 es-**
6 **tablished as a subaccount in the Emergency Reserve Fund established**
7 **by section 15, Article IX of the Oregon Constitution. Moneys in the**
8 **Higher Education Stability Subaccount may be appropriated only for**
9 **purposes that will benefit higher education institutions, higher edu-**
10 **cation activities or community colleges authorized by law to receive**
11 **state aid.**

12 **“(2) The Legislative Assembly may appropriate moneys from the**
13 **Higher Education Stability Subaccount only if the appropriation is**
14 **approved by three-fifths of the members serving in each house of the**
15 **Legislative Assembly and the Legislative Assembly finds one of the**
16 **following:**

17 **“(a) That the last quarterly economic and revenue forecast for a**
18 **biennium indicates that moneys available to the General Fund for the**
19 **next biennium will be at least three percent less than appropriations**
20 **from the General Fund for the current biennium;**

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

1 **employment; or**

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

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

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

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

29 **“(2) If the moneys in the Higher Education Stability Subaccount**
30 **just prior to the time of a transfer scheduled under section 1 of this**

1 **2011 Act or ORS 291.349 do not equal at least 15 percent of the amount**
2 **of General Fund appropriations for the prior biennium, the transfer**
3 **to the Higher Education Stability Subaccount shall be made regardless**
4 **of whether that transfer increases the amount in the Higher Education**
5 **Stability Subaccount to at least 15 percent of the amount of General**
6 **Fund appropriations for the prior biennium.**

7 **“(3) As used in this section:**

8 **“(a) ‘General Fund appropriations’ means the amount of moneys**
9 **appropriated from the General Fund for a biennium in the legislatively**
10 **approved budget for the biennium, minus the amount of any General**
11 **Fund appropriation balances for that biennium that revert to the**
12 **General Fund as provided by law.**

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

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

19 **“SECTION 3. ORS 291.349 is amended to read:**

20 **“291.349. (1) As soon as practicable after adjournment sine die of the**
21 **odd-numbered year regular session of the Legislative Assembly, the Oregon**
22 **Department of Administrative Services shall report to the Emergency Board**
23 **the estimate as of July 1 of the first year of the biennium of General Fund**
24 **and State Lottery Fund revenues that will be received by the state during**
25 **that biennium. The Oregon Department of Administrative Services shall**
26 **base its estimate on the last forecast given to the Legislative Assembly be-**
27 **fore adjournment sine die of the odd-numbered year regular session on**
28 **which the printed, adopted budget prepared in the Oregon Department of**
29 **Administrative Services is based, adjusted only insofar as necessary to re-**
30 **fect changes in laws adopted at that session. The report shall contain the**

1 estimated revenues from corporate income and excise taxes separately from
2 the estimated revenues from other General Fund sources. The Oregon De-
3 partment of Administrative Services may revise the estimate if necessary
4 following adjournment sine die of [*any special or emergency*] **an even-**
5 **numbered year regular session or special** session of the Legislative As-
6 sembly but any revision does not affect the basis of the computation
7 described in subsection (3) or (4) of this section.

8 “(2) As soon as practicable after the end of the biennium, the Oregon
9 Department 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 regular*
17 *session, by two percent or more,*] **by two percent or more, as estimated**
18 **after adjournment sine die of an odd-numbered year regular session,**
19 the total amount of that excess shall be [*credited to corporate income and*
20 *excise taxpayers in a percentage amount of prior year corporate excise and in-*
21 *come tax liability as determined under subsection (5) of this section. However,*
22 *no credit shall be allowed against tax liability imposed by ORS 317.090*]
23 **transferred to the Higher Education Stability Subaccount established**
24 **by section 1 of this 2011 Act in the Emergency Reserve Fund estab-**
25 **lished by section 15, Article IX of the Oregon Constitution.**

26 “(4) If the revenues received from General Fund revenue sources, exclu-
27 sive of those described in subsection (3) of this section, during the biennium
28 exceed the amounts estimated to be received from such sources for the
29 biennium[, *as estimated after adjournment sine die of the regular session, by*
30 *two percent or more, there shall be refunded from personal income tax revenues*

1 *an amount equal to the total amount of that excess]* **by two percent or more,**
2 **as estimated after adjournment sine die of an odd-numbered year**
3 **regular session, one-half of the total amount of the excess shall be**
4 **transferred to the Emergency Reserve Fund established by section 15,**
5 **Article IX of the Oregon Constitution, and one-half of the total**
6 **amount of the excess shall be returned to personal income taxpayers,**
7 reduced by the cost certified by the Department of Revenue under ORS
8 291.351 as being allocable to payments described under this subsection. The
9 excess amount to be refunded shall be paid to personal income taxpayers in
10 a percentage amount of prior year personal income tax liability as deter-
11 mined under subsection [(6)] **(5)** of this section.

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

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

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

30 *“(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*
17 *credited under subsection (3) of this section for a tax year and an unused*
18 *credit amount from a prior tax year is carried forward to the tax year as pre-*
19 *scribed under paragraph (f) of this subsection, the amount of the carryforward*
20 *credit 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 to **personal income***
26 ***taxpayers** under subsection (4) of this section, on or before September 15,*
27 *following the end of each biennium, the Oregon Department of Administra-*
28 *tive Services shall determine and certify to the Department of Revenue the*
29 *percentage amount of refund payment for purposes of subsection (4) of this*
30 *section. The percentage amount so determined shall be a percentage amount*

1 to the nearest one-hundredth of a percent that will distribute the excess to
2 be refunded to personal income taxpayers under subsection (4) of this section.
3 The percentage amount shall equal the amount distributed **to personal in-**
4 **come taxpayers** under subsection (4) of this section divided by the estimated
5 total personal income tax liability for all personal income taxpayers for tax
6 years beginning in the calendar year immediately preceding the calendar
7 year in which the excess is determined.

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

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

18 “(B) Before the allowance of any other credit or offset against tax liabil-
19 ity allowed or allowable on the return for the tax year; and

20 “(C) Before the application of estimated tax payments, withholding or
21 other advance tax payments.

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

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

29 “(A) For a tax year beginning in the calendar year immediately preceding
30 the calendar year in which the excess is determined for which refund is being

1 made; and

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

4 “[7] (6) No refund shall be made to a taxpayer if, after making the cal-
5 culation described under subsection [(6)] (5) of this section, the amount cal-
6 culated is less than \$1.

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

10 **“SECTION 4.** ORS 305.792 is amended to read:

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

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

22 “(b) Once made, the election is irrevocable for any surplus refund pay-
23 ments received until a subsequent return is filed for a later tax year, and
24 on which the checkoff box is not checked.

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

1 *using the surplus refund credit percentage to reduce the taxpayer's tax liability.*
2 *ity.]*

3 *"[(b) A taxpayer that checks the appropriate checkoff box indicating that*
4 *the credit will not be claimed but that nevertheless claims the credit in deter-*
5 *mining the taxpayer's tax liability shall be considered to have not made the*
6 *election under this subsection.]*

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

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

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

22 **"SECTION 5.** ORS 317.853 is amended to read:

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

30 **"(2)** Before the end of each biennium, beginning with the biennium ending

1 on June 30, 2015, the Department of Revenue shall estimate the revenue de-
2 scribed in subsection (1) of this section that is received during the biennium.
3 An amount equal to that estimate shall be transferred into the [*Oregon Rainy*
4 *Day Fund*] **Emergency Reserve Fund** established by [*ORS 293.144*] **section**
5 **15, Article IX of the Oregon Constitution**, on or before June 30 of each
6 odd-numbered year.

7 **“SECTION 6.** ORS 318.074 is amended to read:

8 “318.074. (1) For tax years beginning on or after January 1, 2013, any
9 revenue that is received as a result of a rate of tax above six and six-tenths
10 percent imposed under this chapter and that is in excess of the revenue that
11 would be received under this chapter at a rate of six and six-tenths percent
12 shall be deposited into the [*Oregon Rainy Day Fund*] **Emergency Reserve**
13 **Fund** established by [*ORS 293.144*] **section 15, Article IX of the Oregon**
14 **Constitution.**

15 “(2) Before the end of each biennium, beginning with the biennium ending
16 on June 30, 2015, the Department of Revenue shall estimate the revenue de-
17 scribed in subsection (1) of this section that is received during the biennium.
18 An amount equal to that estimate shall be transferred into the [*Oregon Rainy*
19 *Day Fund*] **Emergency Reserve Fund** established by [*ORS 293.144*] **section**
20 **15, Article IX of the Oregon Constitution**, on or before June 30 of each
21 odd-numbered year.

22 **“SECTION 7.** Pursuant to section 15 (3), Article IX of the Oregon
23 **Constitution, once each month, the Oregon Department of Adminis-**
24 **trative Services shall calculate the amount of General Fund interest**
25 **that is attributable to moneys in the Emergency Reserve Fund, ex-**
26 **clusive of any subaccount in the Emergency Reserve Fund. Except**
27 **as provided in section 15 (6), Article IX of the Oregon Constitution, the**
28 **amount calculated under this subsection shall be transferred to the**
29 **Emergency Reserve Fund.**

30 **“SECTION 8.** Sections 1, 2 and 7 of this 2011 Act, the amendments

1 to 291.349, 305.792, 317.853 and 318.074 by sections 3 to 6 of this 2011 Act
2 and the repeal of ORS 293.144, 293.146 and 293.148 by section 9 of this
3 2011 Act apply to biennia beginning on or after July 1, 2011.

4 **“SECTION 9. ORS 293.144, 293.146 and 293.148 are repealed.**

5 **“SECTION 10. The Emergency Reserve Fund established by section**
6 **15, Article IX of the Oregon Constitution, is intended to be a contin-**
7 **uation of the Oregon Rainy Day Fund established by ORS 293.144.**
8 **Moneys contained on the effective date of this 2011 Act in the Oregon**
9 **Rainy Day Fund established by ORS 293.144 are considered to be mon-**
10 **eys in the Emergency Reserve Fund established by section 15, Article**
11 **IX of the Oregon Constitution.**

12 **“SECTION 11. This 2011 Act does not become effective unless the**
13 **amendment to the Oregon Constitution proposed by Senate Joint Re-**
14 **solution 26 (2011) is approved by the people at the regular general**
15 **election held in November 2012. This 2011 Act takes effect on the ef-**
16 **fective date of that amendment.”.**

17