

# DRAFT

## SUMMARY

Modifies authority for issuance of state bonds for benefit of university with governing board.

### A BILL FOR AN ACT

1  
2 Relating to state bonds issued for the benefit of a university with a govern-  
3 ing board; creating new provisions; amending ORS 351.190, 351.369,  
4 351.460, 352.107, 352.129 and 352.138; and repealing ORS 351.450 and  
5 351.455.

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

7 **SECTION 1. Section 2 of this 2015 Act is added to and made a part**  
8 **of ORS 351.365 to 351.379.**

9 **SECTION 2. (1) When the Legislative Assembly authorizes the is-**  
10 **suance of state bonds for the benefit of a university with a governing**  
11 **body, \_\_\_\_\_:**

12 **(a) Shall administer state bonds issued for the benefit of a univer-**  
13 **sity with a governing board.**

14 **(b) Is deemed to be the state agency described in ORS 286A.102,**  
15 **286A.160 and 286A.195, notwithstanding the definition of “state**  
16 **agency” in ORS 286A.001.**

17 **(c) Is deemed to be a related agency for purposes of state bonds is-**  
18 **sued for the benefit of a university with a governing body, under ORS**  
19 **chapter 286A, notwithstanding the definition of a “related agency” in**  
20 **ORS 286A.001.**

21 **(2) \_\_\_\_\_ may adopt rules for the administration of state bonds is-**

1 sued for the benefit of a university with a governing board, as de-  
2 scribed in this section. The rules may require:

3 (a) A university with a governing board to enter into a grant or  
4 loan agreement that requires the university to use the net proceeds  
5 and interest earnings approved for expenditure on the project for the  
6 purposes described in the university's request to the Higher Education  
7 Coordinating Commission under ORS 351.735 and ORS 352.089.

8 (b) Restrictions to protect tax-exempt status of the interest paid on  
9 the state bonds funding the loan or grant.

10 (c) Covenants that indemnify the State of Oregon from regulatory  
11 or bondholder liability due to the action or inaction of the university  
12 with a governing board related to the use of state bond proceeds.

13 (3) A university with a governing board shall comply with requests  
14 from the State Treasurer or \_\_\_\_\_ for information and take action  
15 requested by the State Treasurer or \_\_\_\_\_ to maintain the  
16 excludability of interest on the state bonds from gross income under  
17 the Internal Revenue Code or to maintain a federal interest subsidy  
18 payment or other federal tax-advantaged status for the state bonds  
19 under the Internal Revenue Code.

20 (4) The State Treasurer shall deposit net proceeds and interest  
21 earnings approved by the Legislative Assembly for expenditure on a  
22 project of a university with a governing board in one or more funds  
23 or accounts established in the State Treasury or with a third party  
24 selected by \_\_\_\_\_ and approved by the State Treasurer unless an  
25 agreement entered into under ORS 352.107 or 352.135 provides other-  
26 wise.

27 (5) The State Treasurer shall disburse net proceeds and interest  
28 earnings approved for expenditure on the project to the university  
29 with a governing board according to procedures in the rules adopted  
30 by \_\_\_\_\_.

31 (6) Before state bonds are issued under Article XI-G of the Oregon

1 **Constitution, for the benefit of a university with a governing board,**  
2 **\_\_\_\_\_ shall determine that the university has matching funds required**  
3 **by Article XI-G of the Oregon Constitution or has entered into a grant**  
4 **agreement, contract or other agreement that obligates a private entity**  
5 **or a federal, state or local governmental entity to provide matching**  
6 **funds for the project. The State Treasurer may not issue state bonds**  
7 **under Article XI-G of the Oregon Constitution until the university**  
8 **with a governing board certifies to \_\_\_\_\_ and the State Treasurer that:**

9 (a) **The university has matching funds available for the same, or a**  
10 **similar, purpose as the state bonds issued under Article XI-G.**

11 (b) **Matching funds are not proceeds, or interest earnings on pro-**  
12 **ceeds, of general obligation indebtedness of the State of Oregon in-**  
13 **curred under any article of the Oregon Constitution.**

14 (c) **Matching funds are available to the university in an amount at**  
15 **least equal to the amount of net proceeds and interest earnings ap-**  
16 **proved for expenditure on the project by the Legislative Assembly.**

17 (7) **If state bonds are issued under Article XI-Q of the Oregon Con-**  
18 **stitution for the benefit of a university with a governing board, the**  
19 **university shall comply with the rules adopted by the Oregon Depart-**  
20 **ment of Administrative Services that establish policies and procedures**  
21 **for the disbursement of project funds to a project agency, including**  
22 **but not limited to:**

23 (a) **Entering into a grant or loan agreement.**

24 (b) **Submitting a request for the project funds to the Higher Edu-**  
25 **cation Coordinating Commission pursuant to ORS 351.054.**

26 **SECTION 3. ORS 351.369 is amended to read:**

27 351.369. (1) **A university with a governing board may elect to remain eli-**  
28 **gible to receive proceeds of state bonds. If a university with a governing**  
29 **board, or \_\_\_\_\_, requests the State Treasurer to issue state bonds for the**  
30 **benefit of the university with a governing board that are authorized under**  
31 **Article XI-F(1) or XI-Q of the Oregon Constitution or ORS 283.085 to 283.092,**

1 and the state bonds are intended to be repaid in whole or in part by uni-  
2 versity revenues or other moneys under the control of the university, the  
3 State Treasurer must review and approve all plans to issue revenue bonds  
4 of the university and to execute other obligations related to the revenue  
5 bonds.

6 (2) The State Treasurer shall limit the scope of review and approval under  
7 subsection (1) of this section to consideration of periodic cash flow  
8 projections and other information necessary to determine the sufficiency of  
9 the cash flow of the university with a governing board to pay any loans from  
10 state agencies funded with the proceeds of state bonds and to pay costs for:

11 (a) State bonds issued for the benefit of the university with a governing  
12 board pursuant to Article XI-F(1) or XI-Q of the Oregon Constitution or ORS  
13 283.085 to 283.092; and

14 (b) Revenue bonds issued pursuant to ORS 351.365 to 351.379.

15 (3) A university with a governing board that issues revenue bonds of the  
16 university, or executes other obligations related to the revenue bonds, with-  
17 out the approval of the State Treasurer as provided in subsection (2) of this  
18 section is not eligible to receive proceeds of the state bonds described in  
19 subsection (1) of this section and that are intended to be repaid in whole or  
20 in part by university revenues or other moneys under the control of the  
21 university on or after August 14, 2013.

22 [(4) *For the purposes of ORS chapter 286A, a university with a governing*  
23 *board has the powers and duties of a related agency as described in ORS*  
24 *352.138 (10) with respect to state bonds that:]*

25 [(a) *Were issued before August 14, 2013, for the benefit of a university with*  
26 *a governing board and that remain outstanding; and]*

27 [(b) *Are authorized under ORS 286A.035 and issued on or after August 14,*  
28 *2013, for the benefit of a university with a governing board.]*

29 **SECTION 4.** ORS 351.460 is amended to read:

30 351.460. [(1) *The State Board of Higher Education shall maintain an ac-*  
31 *count within the Oregon University System Fund established by ORS 351.506*

1 *to provide for the payment of the principal of and the interest upon:]*

2 *[(a) The bonds issued under authority of Article XI-F(1) of the Oregon*  
3 *Constitution and ORS 351.350;]*

4 *[(b) The bonds issued under authority of Article XI-G of the Oregon Con-*  
5 *stitution and ORS 351.345; and]*

6 *[(c) Amounts due under financial agreements entered into under ORS*  
7 *351.356.]*

8 *[(2) The account maintained under this section comprises one subaccount*  
9 *for each of the purposes of the account identified in subsection (1) of this sec-*  
10 *tion.]*

11 *[(3) Income and interest derived from moneys in the subaccounts of the ac-*  
12 *count maintained under this section are credited to the appropriate*  
13 *subaccount.]*

14 *[(4) The sources of moneys for the account maintained under this section*  
15 *are:]*

16 *[(a) All moneys received from ad valorem taxes levied pursuant to ORS*  
17 *291.445;]*

18 *[(b) All moneys that the Legislative Assembly may provide in lieu of ad*  
19 *valorem taxes;]*

20 *[(c) The revenues transferred to the account maintained under this section*  
21 *pursuant to subsection (6) of this section;]*

22 *[(d) All moneys received as accrued interest upon bonds sold;]*

23 *[(e) All earnings from investments of the account;]*

24 *[(f) Net proceeds of the sale of refunding bonds; and]*

25 *[(g) All moneys that the State of Oregon has agreed to hold in the account*  
26 *to pay amounts due under financial agreements entered into under ORS*  
27 *351.356.]*

28 *[(5) The board may credit the account maintained under this section with*  
29 *moneys received from either a sale or interfund transfer of buildings, struc-*  
30 *tures, land or other projects. When the buildings, structures, land or other*  
31 *projects are sold or the use of the buildings, structures, land or other projects*

1 *is rededicated so that a transfer from one subaccount to another subaccount*  
2 *is appropriate, the moneys received shall be credited to the appropriate subac-*  
3 *count.]*

4 [(6)(a) *The board shall transfer revenues to the account maintained under*  
5 *this section in amounts sufficient to pay, when due, the principal of and the*  
6 *interest and any premium upon the bonds issued under authority of Article*  
7 *XI-F(1) of the Oregon Constitution. Revenues not required for the account as*  
8 *described in this subsection shall be transferred to other accounts and subac-*  
9 *counts within the Oregon University System Fund that are designated by the*  
10 *Chancellor of the Oregon University System. The portion of student building*  
11 *fees that are imposed under ORS 351.170 to provide the funds with which to*  
12 *amortize the principal of and pay the interest on bonds issued under Article*  
13 *XI-F(1) of the Oregon Constitution shall be applied only to pay those bonds.]*

14 [(b) *For purposes of this subsection, “revenues” includes all funds available*  
15 *to the board except:]*

16 [(A) *Amounts appropriated by the Legislative Assembly from the General*  
17 *Fund; and]*

18 [(B) *Lottery funds allocated for debt service.]*

19 [(7)(a) *The board may not use the account maintained under this section for*  
20 *any purpose other than the purposes for which the account was created.]*

21 [(b) *Notwithstanding paragraph (a) of this subsection, if the balance in any*  
22 *subaccount exceeds the amount required to pay debt service during a fiscal*  
23 *period, the board may transfer the surplus in the subaccount to other accounts*  
24 *in the Oregon University System Fund. This paragraph does not apply to any*  
25 *surplus consisting of General Fund moneys appropriated for debt service or*  
26 *lottery funds allocated for debt service. Any surplus consisting of General*  
27 *Fund moneys appropriated for debt service shall revert to the General Fund*  
28 *as provided in ORS 293.190.]*

29 **(1) Unless otherwise provided in statute, the State Treasurer shall**  
30 **maintain one or more funds or accounts within the State Treasury for**  
31 **payment of principal of, and interest on, state bonds issued for the**

1 **benefit of a university with a governing board.**

2 **(2) Funds or accounts maintained under this section may contain:**

3 **(a) Moneys received from ad valorem taxes levied pursuant to ORS**  
4 **291.445;**

5 **(b) Moneys provided by the Legislative Assembly in lieu of ad**  
6 **valorem taxes levied under ORS 291.445;**

7 **(c) The university revenues or other moneys transferred to the**  
8 **State Treasurer under ORS 351.379 or pursuant to an agreement under**  
9 **ORS 352.135;**

10 **(d) Moneys received as accrued interest on state bonds sold;**

11 **(e) Earnings from the investment of moneys in the account;**

12 **(f) Net proceeds of the sale of refunding state bonds; and**

13 **(g) Moneys the State of Oregon agrees to hold in the fund or ac-**  
14 **count for the purpose of paying amounts due on the bonds.**

15 **SECTION 5.** ORS 352.129 is amended to read:

16 352.129. (1) Notwithstanding ORS 352.102 and 352.107 and section 169,  
17 chapter 768, Oregon Laws 2013, the amendments to ORS 243.107 and 351.094  
18 by sections 88 and 113, chapter 768, Oregon Laws 2013, and the operative date  
19 set forth in section 171, chapter 768, Oregon Laws 2013, a university with a  
20 governing board shall continue to participate with other public universities  
21 listed in ORS 352.002 in all shared administrative services relating to:

22 **(a) Employee benefits, including but not limited to group insurance or**  
23 **deferred compensation plans authorized by ORS 351.094;**

24 **(b) Collective bargaining with any statewide bargaining unit that includes**  
25 **employees of two or more public universities listed in ORS 352.002; and**

26 **(c) Risk management, the purchase of insurance or the management of a**  
27 **self-insurance program authorized by ORS 351.096 or 352.107.**

28 **(2) The shared administrative services listed in subsection (1) of this sec-**  
29 **tion must be done under the same terms, conditions, funding model and pol-**  
30 **icy frameworks as those that exist on August 14, 2013, until July 1, 2015.**  
31 **On and after July 1, 2015, public universities listed in ORS 352.002 may**

1 choose to participate in shared services under an alternative shared services  
2 model.

3 (3) Two or more public universities listed in ORS 352.002, including uni-  
4 versities with governing boards, may participate in shared services not de-  
5 scribed in subsection (1) of this section, including but not limited to shared  
6 services involving legal services and information technology.

7 (4) Pursuant to ORS 352.025, and in order to ensure that the establishment  
8 of universities with governing boards does not negatively impact public  
9 universities that do not have governing boards, if a university with a gov-  
10 erning board stops participating in a service shared by two or more public  
11 universities listed in ORS 352.002, including but not limited to the shared  
12 services listed in this section, and the withdrawal from the service has a  
13 negative effect on the remaining public universities, the Higher Education  
14 Coordinating Commission shall compensate universities suffering a negative  
15 impact through either reduction of appropriations made to the university  
16 with a governing board or any other method found to be appropriate by the  
17 commission.

18 (5) The office of the Chancellor of the Oregon University System shall  
19 coordinate public university shared services described in this section until  
20 a new entity to coordinate shared services is operational.

21 **(6)(a) A university with a governing board shall enter into a shared**  
22 **services agreement for state bonds issued for the benefit of the uni-**  
23 **versity that provides for:**

24 **(A) Administering debt service on the state bonds;**

25 **(B) Maintaining the excludability of interest on state bonds from**  
26 **gross income under the Internal Revenue Code; or**

27 **(C) Maintaining a federal interest subsidy payment or other federal**  
28 **tax-advantaged status granted under the Internal Revenue Code.**

29 **(b) If a university with a governing body does not participate in a**  
30 **shared services agreement as required by this subsection, the univer-**  
31 **sity must comply with rules adopted by\_\_\_\_\_ related to debt service**



1 **and maintenance of the bonds.**

2 **SECTION 6.** ORS 351.190 is amended to read:

3 351.190. The State Board of Higher Education may obtain, by donation,  
4 purchase, agreement or condemnation, the title to any land authorized to be  
5 acquired by ORS 351.345[, 351.350 and 351.450] **and 351.350**. Condemnation  
6 proceedings instituted by the board shall be conducted in accordance with  
7 ORS chapter 35.

8 **SECTION 7.** ORS 352.107 is amended to read:

9 352.107. (1) A university with a governing board may:

10 (a) Acquire, receive, hold, keep, pledge, control, convey, manage, use,  
11 lend, expend and invest all moneys, appropriations, gifts, bequests, stock and  
12 revenue from any source.

13 (b) Borrow money for the needs of the university in such amounts and for  
14 such time and upon such terms as may be determined by the university or  
15 the governing board.

16 (c) Make any and all contracts and agreements, enter into any partner-  
17 ship, joint venture or other business arrangement and create and participate  
18 fully in the operation of any business structure, including but not limited to  
19 the development of business structures and networks with any public or  
20 private government, nonprofit or for-profit person or entity, that in the  
21 judgment of the university or the governing board is necessary or appropri-  
22 ate.

23 (d) Establish, collect and use charges, fines and fees for services, facili-  
24 ties, operations and programs.

25 (e) Purchase, receive, subscribe for or otherwise acquire, own, hold, vote,  
26 use, sell, mortgage, lend, pledge, invest in or otherwise dispose of and deal  
27 in or with the shares, stock or other equity or interests in or obligations of  
28 any other entity. The State of Oregon may not have any proprietary or other  
29 interest in investments or funds referenced in this paragraph.

30 (f) Acquire, purchase, purchase on a contractual basis, borrow, receive,  
31 own, hold, control, convey, sell, manage, operate, lease, lease-purchase, li-

1 cense, lend, invest in, issue, improve, develop, use, expend and dispose of  
2 personal property, including intellectual property, of any nature, tangible or  
3 intangible.

4 (g) Establish employee benefit plans of any type, subject to ORS 351.094.

5 (h) Take, hold, grant, pledge or dispose of mortgages, liens and other se-  
6 curity interests on real and personal property.

7 (i) Spend all available moneys without appropriation or expenditure lim-  
8 itation approval from the Legislative Assembly, except for moneys received  
9 by a university with a governing board pursuant to a funding request sub-  
10 mitted under ORS 352.089 (4) and the proceeds of state bonds issued for the  
11 benefit of a university with a governing board. The proceeds of state bonds  
12 issued for the benefit of a university with a governing board must be held  
13 pursuant to an agreement entered into by the State Treasurer and a univer-  
14 sity with a governing board under ORS 352.135 (2). [*The provisions of ORS*  
15 *351.450, 351.455 and 351.460 do*] **ORS 351.460 does** not apply to state bonds  
16 issued for the benefit of a university with a governing board pursuant to  
17 Article XI-F(1) or XI-G of the Oregon Constitution.

18 (j) Acquire, purchase, purchase on a contractual basis, borrow, receive,  
19 own, hold, control, convey, mortgage, pledge or otherwise encumber, sell,  
20 manage, operate, lease, lease-purchase, license, lend, invest in, improve, de-  
21 velop, use, expend and dispose of real property.

22 (k) Erect, construct, improve, remodel, develop, repair, maintain, equip,  
23 furnish, lease, lend, convey, sell, manage, operate, use and dispose of any  
24 building, structure, land or project.

25 (L) Acquire, by condemnation or otherwise, private property that is nec-  
26 essary or convenient. The right to acquire property by condemnation shall  
27 be exercised as provided by ORS chapter 35.

28 (m) Establish policies for the organization, administration and develop-  
29 ment of the university which, to the extent set forth in those policies, shall  
30 have the force of law and may be enforced through university procedures  
31 that include an opportunity for appeal and in any court of competent juris-

1 diction.

2 (n) Sue in its own name, be sued in its own name and issue and enforce  
3 subpoenas in its own name.

4 (o) Hire or retain attorneys for the provision of all legal services. A  
5 university with a governing board shall reimburse the State Treasurer for  
6 legal fees incurred in connection with state bonds issued at the request of  
7 the university.

8 (p) Purchase any and all insurance, operate a self-insurance program or  
9 otherwise arrange for the equivalent of insurance coverage of any nature and  
10 the indemnity and defense of its officers, agents and employees or other  
11 persons designated by the university.

12 (q) Subject to the procedures set forth in ORS 352.089, establish, supervise  
13 and control academic and other programs, units of operation and standards,  
14 qualifications, policies and practices relating to university matters such as  
15 admissions, curriculum, grading, student conduct, credits, scholarships and  
16 the granting of academic degrees, certificates and other forms of recognition.

17 (r) Enforce and recover any fees, charges and fines, including but not  
18 limited to tuition and mandatory enrollment fees.

19 (s) Make available and perform any and all services on such terms as the  
20 governing board considers appropriate.

21 (t) Delegate and provide for the further delegation of any and all powers  
22 and duties, subject to the limitations expressly set forth in law.

23 (2) The budget for a university with a governing board shall be prepared  
24 in accordance with generally accepted accounting principles and adopted by  
25 the governing board in accordance with ORS 192.610 to 192.710.

26 (3) A governing board or university with a governing board may perform  
27 any other acts that in the judgment of the board or university are required,  
28 necessary or appropriate to accomplish the rights and responsibilities  
29 granted to the board or university by law.

30 **SECTION 8.** ORS 352.138, as amended by section 6, chapter 113, Oregon  
31 Laws 2014, and section 17, chapter 121, Oregon Laws 2014, is amended to

1 read:

2 352.138. (1) The following entities are not subject to any provision of law  
3 enacted after January 1, 2013, that is unique to governmental entities unless  
4 the following entities are expressly named:

5 (a) A university with a governing board; and

6 (b) Any not-for-profit organization or other entity if the equity of the  
7 entity is owned or controlled exclusively by a university with a governing  
8 board and if the organization or entity is created by the university to ad-  
9 vance any of the university's statutory missions.

10 (2) Notwithstanding subsection (1) of this section, the provisions of ORS  
11 30.260 to 30.460, 33.710, 33.720, 200.005 to 200.025, 200.045 to 200.090, 236.605  
12 to 236.640, 279.835, 279.840, 279.850 and 297.040 and ORS chapters 35, 190, 192  
13 and 244 apply to a university with a governing board under the same terms  
14 as they apply to public bodies other than the state.

15 (3) Except as otherwise provided by law, the provisions of ORS 35.550 to  
16 35.575, 180.060, 180.210 to 180.235, 184.305 to 184.345, 190.480, 190.490, 200.035,  
17 243.696, 357.805 to 357.895 and 656.017 (2) and ORS chapters 182, 183, 240, 270,  
18 273, 276, 278, 279A, 279B, 279C, 282, 283, 291, 292, 293, 294, 295 and 297 do not  
19 apply to a university with a governing board.

20 (4) Notwithstanding subsections (1) and (3) of this section, ORS 240.167,  
21 279C.600 to 279C.625, 279C.800, 279C.810, 279C.825, 279C.830, 279C.835,  
22 279C.840, 279C.845, 279C.850, 279C.855, 279C.860, 279C.865, 279C.870 and  
23 292.043 apply to a university with a governing board under the same terms  
24 as they apply to public bodies other than the state.

25 (5) Notwithstanding subsection (2) of this section, ORS 190.430 and 192.105  
26 do not apply to a university with a governing board or any organization or  
27 other entity described in subsection (1) of this section.

28 (6) Except as set forth in subsection (3) of this section, ORS 243.650 to  
29 243.782 and 276.073 to 276.090 and ORS chapters 238 and 238A apply to a  
30 university with a governing board under the same terms as they apply to the  
31 state.

1 (7) ORS 351.065, 351.067, 351.642, 351.643, 351.644, 351.646, 351.656, 351.658,  
2 352.012 and 352.375 apply to a university with a governing board, except that  
3 the board or university shall exercise the responsibilities and authorities of  
4 the State Board of Higher Education, the Higher Education Coordinating  
5 Commission or the Oregon University System.

6 (8) A university with a governing board and its agents and employees  
7 remain subject to all statutes and administrative rules of this state that  
8 create rights, benefits or protections in favor of military veterans, service  
9 members and families of service members to the same extent as an agency  
10 of this state would be subject to such statutes and administrative rules.

11 (9) ORS 351.692, 351.695 and 351.697 apply to a governing board, except  
12 that the board has the responsibilities and authorities with respect to the  
13 university it governs that the State Board of Higher Education and the  
14 Oregon University System have with respect to the public universities iden-  
15 tified in ORS 351.011. A university with a governing board may not issue a  
16 tax credit certificate under ORS 351.692, 351.695 and 351.697 that will cause  
17 the public universities listed in ORS 352.002 to owe the General Fund more  
18 than \$6 million at any one time under ORS 351.692, 351.695 and 351.697.

19 *[(10) If state bonds are issued for the benefit of a university with a gov-*  
20 *erning board, the university shall have the powers and duties of a related*  
21 *agency, as defined in ORS 286A.001, to the extent necessary for the issuance*  
22 *of the state bonds and the administration of the proceeds of the state bonds.]*

23 *[(11)]* (10) If state bonds are issued for the benefit of a university with a  
24 governing board under Article XI-Q of the Oregon Constitution, the univer-  
25 sity shall have the powers and duties of a project agency, as defined in ORS  
26 286A.816, to the extent necessary for the issuance of the state bonds and the  
27 administration of the proceeds of the state bonds.

28 *[(12)]* (11) Nothing in this section may be construed so that statutory  
29 provisions that are not set forth in this section apply to a university with  
30 a governing board.

31 **SECTION 9. ORS 351.450 and 351.455 are repealed.**

