

# House Bill 3199

Sponsored by COMMITTEE ON 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**.

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 governing board; creating new  
3 provisions; amending ORS 351.190, 351.369, 351.460, 352.107, 352.129 and 352.138; and repealing  
4 ORS 351.450 and 351.455.

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

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

8 **SECTION 2. (1) When the Legislative Assembly authorizes the issuance of state bonds**  
9 **for the benefit of a university with a governing body, \_\_\_\_\_:**

10 (a) **Shall administer state bonds issued for the benefit of a university with a governing**  
11 **board.**

12 (b) **Is deemed to be the state agency described in ORS 286A.102, 286A.160 and 286A.195,**  
13 **notwithstanding the definition of "state agency" in ORS 286A.001.**

14 (c) **Is deemed to be a related agency for purposes of state bonds issued for the benefit**  
15 **of a university with a governing body, under ORS chapter 286A, notwithstanding the defi-**  
16 **inition of a "related agency" in ORS 286A.001.**

17 (2) \_\_\_\_\_ **may adopt rules for the administration of state bonds issued for the benefit**  
18 **of a university with a governing board, as described in this section. The rules may require:**

19 (a) **A university with a governing board to enter into a grant or loan agreement that**  
20 **requires the university to use the net proceeds and interest earnings approved for expendi-**  
21 **ture on the project for the purposes described in the university's request to the Higher Ed-**  
22 **ucation Coordinating Commission under ORS 351.735 and ORS 352.089.**

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

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

28 (3) **A university with a governing board shall comply with requests from the State**  
29 **Treasurer or \_\_\_\_\_ for information and take action requested by the State Treasurer or**  
30 **\_\_\_\_\_ to maintain the excludability of interest on the state bonds from gross income under**  
31 **the Internal Revenue Code or to maintain a federal interest subsidy payment or other federal**  
32 **tax-advantaged status for the state bonds under the Internal Revenue Code.**

**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 (4) The State Treasurer shall deposit net proceeds and interest earnings approved by the  
 2 Legislative Assembly for expenditure on a project of a university with a governing board in  
 3 one or more funds or accounts established in the State Treasury or with a third party se-  
 4 lected by \_\_\_\_\_ and approved by the State Treasurer unless an agreement entered into  
 5 under ORS 352.107 or 352.135 provides otherwise.

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

9 (6) Before state bonds are issued under Article XI-G of the Oregon Constitution, for the  
 10 benefit of a university with a governing board, \_\_\_\_\_ shall determine that the university  
 11 has matching funds required by Article XI-G of the Oregon Constitution or has entered into  
 12 a grant agreement, contract or other agreement that obligates a private entity or a federal,  
 13 state or local governmental entity to provide matching funds for the project. The State  
 14 Treasurer may not issue state bonds under Article XI-G of the Oregon Constitution until the  
 15 university with a governing board certifies to \_\_\_\_\_ and the State Treasurer that:

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

18 (b) Matching funds are not proceeds, or interest earnings on proceeds, of general obli-  
 19 gation indebtedness of the State of Oregon incurred under any article of the Oregon Consti-  
 20 tution.

21 (c) Matching funds are available to the university in an amount at least equal to the  
 22 amount of net proceeds and interest earnings approved for expenditure on the project by the  
 23 Legislative Assembly.

24 (7) If state bonds are issued under Article XI-Q of the Oregon Constitution for the benefit  
 25 of a university with a governing board, the university shall comply with the rules adopted  
 26 by the Oregon Department of Administrative Services that establish policies and procedures  
 27 for the disbursement of project funds to a project agency, including but not limited to:

28 (a) Entering into a grant or loan agreement.

29 (b) Submitting a request for the project funds to the Higher Education Coordinating  
 30 Commission pursuant to ORS 351.054.

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

32 351.369. (1) A university with a governing board may elect to remain eligible to receive proceeds  
 33 of state bonds. If a university with a governing board, **or** \_\_\_\_\_, requests the State Treasurer to  
 34 issue state bonds for the benefit of the university with a governing board that are authorized under  
 35 Article XI-F(1) or XI-Q of the Oregon Constitution or ORS 283.085 to 283.092, and the state bonds  
 36 are intended to be repaid in whole or in part by university revenues or other moneys under the  
 37 control of the university, the State Treasurer must review and approve all plans to issue revenue  
 38 bonds of the university and to execute other obligations related to the revenue bonds.

39 (2) The State Treasurer shall limit the scope of review and approval under subsection (1) of this  
 40 section to consideration of periodic cash flow projections and other information necessary to deter-  
 41 mine the sufficiency of the cash flow of the university with a governing board to pay any loans from  
 42 state agencies funded with the proceeds of state bonds and to pay costs for:

43 (a) State bonds issued for the benefit of the university with a governing board pursuant to Ar-  
 44 ticle XI-F(1) or XI-Q of the Oregon Constitution or ORS 283.085 to 283.092; and

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

1 (3) A university with a governing board that issues revenue bonds of the university, or executes  
 2 other obligations related to the revenue bonds, without the approval of the State Treasurer as pro-  
 3 vided in subsection (2) of this section is not eligible to receive proceeds of the state bonds described  
 4 in subsection (1) of this section and that are intended to be repaid in whole or in part by university  
 5 revenues or other moneys under the control of the university on or after August 14, 2013.

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

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

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

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

13 351.460. [(1) The State Board of Higher Education shall maintain an account within the Oregon  
 14 University System Fund established by ORS 351.506 to provide for the payment of the principal of and  
 15 the interest upon:]

16 [(a) The bonds issued under authority of Article XI-F(1) of the Oregon Constitution and ORS  
 17 351.350;]

18 [(b) The bonds issued under authority of Article XI-G of the Oregon Constitution and ORS 351.345;  
 19 and]

20 [(c) Amounts due under financial agreements entered into under ORS 351.356.]

21 [(2) The account maintained under this section comprises one subaccount for each of the purposes  
 22 of the account identified in subsection (1) of this section.]

23 [(3) Income and interest derived from moneys in the subaccounts of the account maintained under  
 24 this section are credited to the appropriate subaccount.]

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

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

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

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

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

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

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

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

35 [(5) The board may credit the account maintained under this section with moneys received from  
 36 either a sale or interfund transfer of buildings, structures, land or other projects. When the buildings,  
 37 structures, land or other projects are sold or the use of the buildings, structures, land or other projects  
 38 is rededicated so that a transfer from one subaccount to another subaccount is appropriate, the moneys  
 39 received shall be credited to the appropriate subaccount.]

40 [(6)(a) The board shall transfer revenues to the account maintained under this section in amounts  
 41 sufficient to pay, when due, the principal of and the interest and any premium upon the bonds issued  
 42 under authority of Article XI-F(1) of the Oregon Constitution. Revenues not required for the account  
 43 as described in this subsection shall be transferred to other accounts and subaccounts within the  
 44 Oregon University System Fund that are designated by the Chancellor of the Oregon University Sys-  
 45 tem. The portion of student building fees that are imposed under ORS 351.170 to provide the funds

1 *with which to amortize the principal of and pay the interest on bonds issued under Article XI-F(1) of*  
 2 *the Oregon Constitution shall be applied only to pay those bonds.]*

3 *[(b) For purposes of this subsection, "revenues" includes all funds available to the board except:]*

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

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

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

8 *[(b) Notwithstanding paragraph (a) of this subsection, if the balance in any subaccount exceeds the*  
 9 *amount required to pay debt service during a fiscal period, the board may transfer the surplus in the*  
 10 *subaccount to other accounts in the Oregon University System Fund. This paragraph does not apply*  
 11 *to any surplus consisting of General Fund moneys appropriated for debt service or lottery funds allo-*  
 12 *cated for debt service. Any surplus consisting of General Fund moneys appropriated for debt service*  
 13 *shall revert to the General Fund as provided in ORS 293.190.]*

14 **(1) Unless otherwise provided in statute, the State Treasurer shall maintain one or more**  
 15 **funds or accounts within the State Treasury for payment of principal of, and interest on,**  
 16 **state bonds issued for the benefit of a university with a governing board.**

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

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

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

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

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

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

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

26 **(g) Moneys the State of Oregon agrees to hold in the fund or account for the purpose of**  
 27 **paying amounts due on the bonds.**

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

29 352.129. (1) Notwithstanding ORS 352.102 and 352.107 and section 169, chapter 768, Oregon Laws  
 30 2013, the amendments to ORS 243.107 and 351.094 by sections 88 and 113, chapter 768, Oregon Laws  
 31 2013, and the operative date set forth in section 171, chapter 768, Oregon Laws 2013, a university  
 32 with a governing board shall continue to participate with other public universities listed in ORS  
 33 352.002 in all shared administrative services relating to:

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

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

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

40 (2) The shared administrative services listed in subsection (1) of this section must be done under  
 41 the same terms, conditions, funding model and policy frameworks as those that exist on August 14,  
 42 2013, until July 1, 2015. On and after July 1, 2015, public universities listed in ORS 352.002 may  
 43 choose to participate in shared services under an alternative shared services model.

44 (3) Two or more public universities listed in ORS 352.002, including universities with governing  
 45 boards, may participate in shared services not described in subsection (1) of this section, including

1 but not limited to shared services involving legal services and information technology.

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

10 (5) The office of the Chancellor of the Oregon University System shall coordinate public uni-  
 11 versity shared services described in this section until a new entity to coordinate shared services is  
 12 operational.

13 **(6)(a) A university with a governing board shall enter into a shared services agreement**  
 14 **for state bonds issued for the benefit of the university that provides for:**

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

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

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

20 **(b) If a university with a governing body does not participate in a shared services**  
 21 **agreement as required by this subsection, the university must comply with rules adopted**  
 22 **by \_\_\_\_\_ related to debt service and maintenance of the bonds.**

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

24 351.190. The State Board of Higher Education may obtain, by donation, purchase, agreement or  
 25 condemnation, the title to any land authorized to be acquired by ORS 351.345[, 351.350 and  
 26 351.450] **and 351.350**. Condemnation proceedings instituted by the board shall be conducted in ac-  
 27 cordance with ORS chapter 35.

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

29 352.107. (1) A university with a governing board may:

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

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

34 (c) Make any and all contracts and agreements, enter into any partnership, joint venture or  
 35 other business arrangement and create and participate fully in the operation of any business struc-  
 36 ture, including but not limited to the development of business structures and networks with any  
 37 public or private government, nonprofit or for-profit person or entity, that in the judgment of the  
 38 university or the governing board is necessary or appropriate.

39 (d) Establish, collect and use charges, fines and fees for services, facilities, operations and pro-  
 40 grams.

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

45 (f) Acquire, purchase, purchase on a contractual basis, borrow, receive, own, hold, control,

1 convey, sell, manage, operate, lease, lease-purchase, license, lend, invest in, issue, improve, develop,  
2 use, expend and dispose of personal property, including intellectual property, of any nature, tangible  
3 or 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 security interests on real  
6 and personal property.

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

16 (j) Acquire, purchase, purchase on a contractual basis, borrow, receive, own, hold, control,  
17 convey, mortgage, pledge or otherwise encumber, sell, manage, operate, lease, lease-purchase, li-  
18 cense, lend, invest in, improve, develop, use, expend and dispose of real property.

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

21 (L) Acquire, by condemnation or otherwise, private property that is necessary or convenient.  
22 The right to acquire property by condemnation shall be exercised as provided by ORS chapter 35.

23 (m) Establish policies for the organization, administration and development of the university  
24 which, to the extent set forth in those policies, shall have the force of law and may be enforced  
25 through university procedures that include an opportunity for appeal and in any court of competent  
26 jurisdiction.

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

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

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

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

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

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

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

45 (2) The budget for a university with a governing board shall be prepared in accordance with

1 generally accepted accounting principles and adopted by the governing board in accordance with  
 2 ORS 192.610 to 192.710.

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

6 **SECTION 8.** ORS 352.138, as amended by section 6, chapter 113, Oregon Laws 2014, and section  
 7 17, chapter 121, Oregon Laws 2014, is amended to read:

8 352.138. (1) The following entities are not subject to any provision of law enacted after January  
 9 1, 2013, that is unique to governmental entities unless the following entities are expressly named:

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

11 (b) Any not-for-profit organization or other entity if the equity of the entity is owned or con-  
 12 trolled exclusively by a university with a governing board and if the organization or entity is cre-  
 13 ated by the university to advance any of the university's statutory missions.

14 (2) Notwithstanding subsection (1) of this section, the provisions of ORS 30.260 to 30.460, 33.710,  
 15 33.720, 200.005 to 200.025, 200.045 to 200.090, 236.605 to 236.640, 279.835, 279.840, 279.850 and 297.040  
 16 and ORS chapters 35, 190, 192 and 244 apply to a university with a governing board under the same  
 17 terms as they apply to public bodies other than the state.

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

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

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

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

32 (7) ORS 351.065, 351.067, 351.642, 351.643, 351.644, 351.646, 351.656, 351.658, 352.012 and 352.375  
 33 apply to a university with a governing board, except that the board or university shall exercise the  
 34 responsibilities and authorities of the State Board of Higher Education, the Higher Education Co-  
 35 ordinating Commission or the Oregon University System.

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

40 (9) ORS 351.692, 351.695 and 351.697 apply to a governing board, except that the board has the  
 41 responsibilities and authorities with respect to the university it governs that the State Board of  
 42 Higher Education and the Oregon University System have with respect to the public universities  
 43 identified in ORS 351.011. A university with a governing board may not issue a tax credit certificate  
 44 under ORS 351.692, 351.695 and 351.697 that will cause the public universities listed in ORS 352.002  
 45 to owe the General Fund more than \$6 million at any one time under ORS 351.692, 351.695 and

1 351.697.

2 [(10) *If state bonds are issued for the benefit of a university with a governing board, the university*  
3 *shall have the powers and duties of a related agency, as defined in ORS 286A.001, to the extent nec-*  
4 *essary for the issuance of the state bonds and the administration of the proceeds of the state bonds.*]

5 [(11)] (10) If state bonds are issued for the benefit of a university with a governing board under  
6 Article XI-Q of the Oregon Constitution, the university shall have the powers and duties of a project  
7 agency, as defined in ORS 286A.816, to the extent necessary for the issuance of the state bonds and  
8 the administration of the proceeds of the state bonds.

9 [(12)] (11) Nothing in this section may be construed so that statutory provisions that are not set  
10 forth in this section apply to a university with a governing board.

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

12