

Enrolled House Bill 4072

Sponsored by Representatives OLSON, RAYFIELD, LININGER, Senators ROBLAN, GELSER, Representative READ; Representatives BARKER, BOONE, BUEHLER, DAVIS, EVANS, GOMBERG, HOYLE, JOHNSON, KENNEMER, KOMP, LIVELY, NEARMAN, PILUSO, WHISNANT, WHITSETT, WILSON, Senators BATES, BEYER, GIROD, STEINER HAYWARD, WHITSETT (Pre-session filed.)

CHAPTER

AN ACT

Relating to university venture development funds; creating new provisions; amending ORS 315.521, 350.540, 350.550, 352.138 and 353.445 and section 27, chapter 913, Oregon Laws 2009; and prescribing an effective date.

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

SECTION 1. Section 27, chapter 913, Oregon Laws 2009, as amended by section 43, chapter 750, Oregon Laws 2013, is amended to read:

Sec. 27. A credit may not be claimed under ORS 315.521 if the initial tax year in which the credit would otherwise be allowed begins on or after January 1, [2016] **2022**.

SECTION 2. ORS 315.521 is amended to read:

315.521. (1) There shall be allowed a credit against the taxes that are otherwise due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318, *[for]* **based on** amounts contributed **in the tax year** to a university venture development fund established under ORS 350.550, to the extent the university that established the fund issued a tax credit certificate to the taxpayer.

(2) The total amount of the credit allowed to a taxpayer shall equal 60 percent of the **contribution** amount stated on the tax credit certificate, **but may not exceed \$600,000**. *[Except as provided in subsection (3) of this section, the amount of the credit allowed in any one tax year shall equal 20 percent of the amount actually contributed to the fund. The credit shall be claimed in three consecutive tax years beginning with the year in which the credit is initially allowed.]*

(3) The credit allowed under this section **in any one tax year** may not exceed *[\$50,000 or]* the tax liability of the taxpayer for the tax year.

(4) **Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise, any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, but may not be carried forward for any tax year thereafter.**

[(4)] (5) In the case of a credit allowed under this section for purposes of ORS chapter 316:

(a) A nonresident shall be allowed the credit in the same manner and subject to the same limitations as a resident. However, the credit shall be prorated using the proportion provided in ORS 316.117.

(b) If a change in the tax year of a taxpayer occurs as described in ORS 314.085 or if the Department of Revenue terminates the taxpayer's tax year under ORS 314.440, the credit shall be prorated or computed in a manner consistent with ORS 314.085.

(c) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit shall be determined in a manner consistent with ORS 316.117.

[5] (6) A taxpayer claiming a credit under this section shall add to federal taxable income for Oregon tax purposes any amount that is deducted for federal tax purposes and that also serves as the basis for the credit allowed under this section.

SECTION 3. ORS 350.540 is amended to read:

350.540. The governing board of a public university listed in ORS 352.002 shall adopt a policy that prescribes the requirements for a venture grant program and the requirements that a grant applicant must meet in order to receive grant moneys from the university venture development fund operated by the university, including requirements:

(1) That a grant recipient remain within this state for at least five years following the receipt of a grant or repay the grant plus interest;

(2) That the university report amounts of tax credit certificates issued by the university and cease issuing certificates until the total amount owed [*by the public universities listed in ORS 352.002*] to the General Fund at any one time under ORS 350.550 (6) does not exceed [*\$6 million*] **\$8.4 million and is allocated as provided in section 6 of this 2016 Act**; and

(3) That the university maintain records of income realized by the university as the result of grants made from the fund and records of amounts paid to the General Fund.

SECTION 4. ORS 353.445 is amended to read:

353.445. The Oregon Health and Science University Board of Directors shall adopt a policy that prescribes the requirements for a venture grant program and the requirements that a grant applicant must meet in order to receive grant moneys from the university venture development fund operated by Oregon Health and Science University, including requirements:

(1) That a grant recipient remain within this state for at least five years following the receipt of a grant or repay the grant plus interest;

(2) That the university report amounts of tax credit certificates issued by the university and cease issuing certificates until the total amount owed to the General Fund [*by the university*] at any one time under ORS 350.550 (6) does not exceed [*\$2.4 million*] **\$8.4 million and is allocated as provided in section 6 of this 2016 Act**; and

(3) That the university maintain records of income realized by the university as the result of grants made from the fund and records of amounts paid to the General Fund.

SECTION 5. ORS 350.550 is amended to read:

350.550. (1) Each public university listed in ORS 352.002 and Oregon Health and Science University may elect to establish a university venture development fund as provided in this section for the purpose of facilitating the commercialization of university research and development. A university shall direct that the university venture development fund be administered, in whole or in part, by the university or by the university's affiliated foundation.

(2) The purposes of a university venture development fund are to provide:

(a) Capital for university entrepreneurial programs;

(b) Opportunities for students to gain experience in applying research to commercial activities;

(c) Proof-of-concept funding for transforming research and development concepts into commercially viable products and services; **and**

(d) Entrepreneurial opportunities for persons interested in transforming research into viable commercial ventures that create jobs in this state.]; *and*]

[*(e) Tax credits for contributors to university research commercialization activities.*]

(3) Each university that elects to establish a university venture development fund shall:

(a) Notify the Department of Revenue of the establishment of the fund;
(b) Either directly or through its affiliated foundation, solicit contributions to the fund and receive, manage and disburse moneys contributed to the fund;

(c) Subject to ORS 315.521 [(1)], 350.540 and 353.445 [(3)], issue tax credit certificates to contributors to the fund in the amount of the contributions;

(d) Establish a grant program that meets the requirements for a venture grant program under policies adopted under ORS 350.540 by the governing board of a public university listed in ORS 352.002 or under policies adopted by the Oregon Health and Science University Board of Directors under ORS 353.445; and

(e) Subject to available moneys from the fund, provide qualified grant applicants with moneys for the purpose of facilitating the commercialization of university research and development.

(4) Except as provided in subsection (5) of this section, moneys in a university venture development fund shall be disbursed only as directed by a university.

(5) A university or its affiliated foundation may charge its customary administrative assessment to manage its university venture development fund in an amount not to exceed three percent of the fund's average balance during the fiscal year of the university or its affiliated foundation. The administrative assessment may be paid from the assets in the fund. Except as authorized by law, no other fees or indirect costs shall be charged against the university venture development fund or any associated grants or other disbursements from the fund.

(6)(a) A university that has established a university venture development fund shall monitor the use of grants made from the fund and identify the income realized by the university as the result of the use of the grants. Income consists of cash realized from royalties, milestone and license fee payments and cash from the sale of equity. The university shall cause the transfer of 20 percent of the income realized from the grants to the General Fund[, *but not to*]. **Except as provided in paragraph (b) of this subsection, the transferred amount may not exceed the amount of the tax credits indicated on certificates** issued by the university as a result of contributions to its university venture development fund. Immediately upon deposit of the transferred amount into the General Fund, the university may issue new tax credits to equal the transferred amount.

(b) In addition to the transferred amounts described in paragraph (a) of this subsection, for any amount listed on a certificate that has not been claimed as a tax credit by a taxpayer within five years of its issuance, a university may accept a donation and issue a certificate for an equal amount.

(7) A university that has established a university venture development fund shall report annually to the Legislative Assembly or, if the Legislative Assembly is not in session, to the interim legislative committees on revenue. The report shall be at the end of the fiscal year of the university or of its affiliated foundation and provide information for that fiscal year. The university shall include in the report the following information pertaining to its university venture development fund:

- (a) The amount of donations received for the fund;
- (b) The amount of income received from the fund;
- (c) The amount of disbursements and grants paid from the fund;
- (d) The amount of income and royalties received from disbursements from the fund; and
- (e) The amount of moneys transferred from the fund to the General Fund.

SECTION 6. (1) Except as provided in subsection (4) of this section, the total amount owed to the General Fund under ORS 350.550 (6), at any time prior to January 1, 2022, by a university that has elected to establish a university venture development fund under ORS 350.550 may not exceed the amounts listed in subsection (2) or (3) of this section.

(2)(a) For Oregon State University, \$3,947,720.

(b) For Oregon Health and Science University, \$1,023,770.

(c) For Portland State University, \$1,275,840.

(d) For University of Oregon, \$2,122,670.

(3) For each of the universities listed in this subsection, \$7,500:

(a) Eastern Oregon University.

- (b) Southern Oregon University.
- (c) Western Oregon University.
- (d) Oregon Institute of Technology.

(4) The presidents of any two or more universities that have established a university venture development fund under ORS 350.550 may achieve an annual agreement for the re-allocation of amounts within their respective limits in this section.

SECTION 7. The amendments to ORS 315.521, 350.540, 350.550 and 353.445 by sections 2 to 5 of this 2016 Act apply to tax years beginning on or after January 1, 2016.

SECTION 8. ORS 352.138 is amended to read:

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

- (a) A university with a governing board; and
- (b) Any not-for-profit organization or other entity if the equity of the entity is owned or controlled exclusively by a university with a governing board and if the organization or entity is created by the university to advance any of the university's statutory missions.

(2) Notwithstanding subsection (1) of this section and ORS 352.033, the provisions of ORS 30.260 to 30.460, 33.710, 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 and ORS chapters 35, 190, 192 and 244 apply to a university with a governing board under the same terms as they apply to public bodies other than the state.

(3) Except as otherwise provided by law, the provisions of ORS 35.550 to 35.575, 180.060, 180.210 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) and ORS chapters 182, 183, 240, 270, 273, 276, 278, 279A, 279B, 279C, 282, 283, 291, 292, 293, 294, 295 and 297 do not apply to a university with a governing board.

(4)(a) Notwithstanding subsections (1) and (3) of this section and ORS 352.033, ORS 240.167, 279C.600 to 279C.625, 279C.800, 279C.810, 279C.825, 279C.827, 279C.830, 279C.835, 279C.836, 279C.838, 279C.840, 279C.845, 279C.850, 279C.855, 279C.860, 279C.865, 279C.870 and 292.043 apply to a university with a governing board under the same terms as they apply to public bodies other than the state.

(b) Notwithstanding subsections (1) and (3) of this section, ORS 279C.800 to 279C.870 apply to an agreement under the terms of which a private entity constructs, reconstructs, renovates or paints an improvement on real property owned by a university with a governing board or by a not-for-profit organization or other entity that a university with a governing board owns or controls exclusively.

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

(6) Notwithstanding ORS 352.033, except as set forth in subsection (3) of this section, ORS 243.650 to 243.782 and 276.073 to 276.090 and ORS chapters 238 and 238A apply to a university with a governing board under the same terms as they apply to the state.

(7) ORS 350.285, 350.290, 352.198, 352.226, 352.232, 352.293, 352.296, 352.303, 352.309 and 352.313 apply to a university with a governing board.

(8) Notwithstanding ORS 352.033, a university with a governing board and its agents and employees remain subject to all statutes and administrative rules of this state that create rights, benefits or protections in favor of military veterans, service members and families of service members to the same extent as an agency of this state would be subject to such statutes and administrative rules.

(9) Notwithstanding ORS 352.033, ORS 350.540, 350.545 and 350.550 apply to a university with a governing board. A university with a governing board may not issue a tax credit certificate under ORS 350.540, 350.545 and 350.550 that will cause *[the public universities listed in ORS 352.002 to owe]* the General Fund **to be owed** more than *[\$6 million]* **\$8.4 million** at any one time under ORS 350.540, 350.545 and 350.550.

(10) If state bonds are issued for the benefit of a university with a governing board under Article XI-Q of the Oregon Constitution:

(a) The Higher Education Coordinating Commission shall have the powers and duties of a project agency, as defined in ORS 286A.816, to the extent necessary for the issuance of the state bonds and the administration of the proceeds of the state bonds; and

(b) The university and the Higher Education Coordinating Commission shall enter into grant contracts or loan agreements that comply with rules adopted by the Oregon Department of Administrative Services relating to:

(A) Disbursement of project funds by a project agency through grant contracts or loan agreements;

(B) Submission of a request for project funds to the commission under ORS 350.095; and

(C) Any other matters determined by the Oregon Department of Administrative Services to be necessary for the administration of the Article XI-Q bond program.

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

SECTION 9. This 2016 Act takes effect on the 91st day after the date on which the 2016 regular session of the Seventy-eighth Legislative Assembly adjourns sine die.

Passed by House February 24, 2016

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate February 29, 2016

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2016

Approved:

.....M.,....., 2016

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2016

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Jeanne P. Atkins, Secretary of State