



HB 4075 Supports Rural Hospitals Without Jeopardizing Common School Fund

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2 attachments (1 MB)

OAESD 4075.pdf; OSBA 4075.pdf;

Chair Nosse, Vice-Chairs Diehl and Nelson, and Members of the House Committee on Health Care:

Bay Area Hospital appreciates the opportunity to submit written testimony in response to testimony offered in opposition to **House Bill 4075** by the Oregon Association of Education Service Districts (OAESD) and the Oregon School Boards Association (OSBA)—both of whom are copied on this email along with Mike from the union. As the only hospital eligible for a stabilization loan under **HB 4075** as drafted, we believe it is important to address directly the constitutional, fiduciary, and practical concerns raised.

Because the opposition testimony rests primarily on assertions regarding **Article VIII of the Oregon Constitution** and the protection of the Common School Fund, we begin there.

I. Article VIII Protects the Common School Fund, Not All Upstream State Holdings

Article VIII, section 2 of the Oregon Constitution establishes the Common School Fund and restricts the use of funds that are part of it. Oregon courts have consistently framed **Article VIII** analysis around **the Fund itself**—its management, preservation, and use—rather than treating every upstream asset or revenue stream as constitutionally immobilized.

As the Oregon Supreme Court has explained, the Common School Fund is a distinct constitutional entity. In **State ex rel. Sprague v. Straub**, the Court stated plainly, “The Common School Fund was created by **section 2, Article VIII, of the Oregon Constitution.**” 240 Or 272, 274, 401 P2d 229 (1965). This framing matters. When Oregon courts have evaluated alleged violations of **Article VIII**, they have done so by examining whether legislative or executive action conflicts with constitutional restrictions governing **the Fund itself**, not by constitutionalizing all antecedent property or custodial holdings that may someday affect the Fund’s balance.

That approach is illustrated in **State Land Board v. Lee**, where the Court addressed the scope of legislative authority over school-related lands and funds. The Court recognized broad legislative authority over management and disposition, subject to constitutional limits, explaining, “[t]he legislature may provide by law for the management and disposition of the lands and funds devoted to the common school system, so long as such legislation does not conflict with the constitutional provisions respecting such lands and funds.” 84 Or 431, 437, 165 P 372 (1917). The Court’s analysis did not treat all upstream management decisions as constitutionally prohibited. Instead, it focused on whether legislative action conflicted with constitutional provisions governing the Common School Fund itself.

Oregon courts have also cautioned against reading implied constitutional limitations so broadly that they unduly restrict legislative authority. In **State ex rel. Pierce v. Hoss**, the Oregon Supreme Court emphasized, “[a] constitution should not be construed so as to unduly limit the powers of the legislature by implication.” 143 Or 41, 55, 21 P2d 234 (1933). OSBA’s interpretation of **Article VIII** would do precisely that—imposing a sweeping implied limitation that constitutionalizes all upstream custodial holdings and financial management decisions merely because they may ultimately affect the Common School Fund. Oregon case law does not support that expansion.

II. Attorney General Interpretation Confirms the Fund-Centered Scope of Article VIII

Attorney General opinions addressing **Article VIII** are consistent with this Fund-centered understanding and are frequently relied upon by the Legislature for constitutional guidance. In **46 Op Atty Gen 208 (1989)**, the Attorney General explained the scope of **Article VIII** as follows: “**Article VIII, section 2, of the Oregon Constitution** restricts the use of moneys that are part of the Common School Fund, but does not purport to regulate every transaction that may ultimately affect the amount of money in the fund.” **46 Op Atty Gen 208, 211 (1989) (emphasis added)**. That interpretation directly addresses the concern raised by OSBA. Article VIII limits how money **in the Common School Fund** may be used; it does not constitutionally immobilize all state-held property or funds that may, at some future point, contribute to the Fund.

III. The Meaning of “Escheat” in Law and in Oregon Statutes

Article VIII, section 2(1)(b) of the Oregon Constitution refers to property that “may accrue to the state by escheat.” Neither the Oregon Supreme Court nor the Oregon Court of Appeals has adopted a comprehensive judicial definition of “escheat” for purposes of **Article VIII**. That absence, however, does not leave the term without meaning.

A. Historical Legal Meaning of Escheat

At common law, *escheat* referred to the **permanent reversion of property to the sovereign when there was no private person legally capable of taking it**. William Blackstone described escheat as follows: “**Escheat therefore is a reversion of lands to the original grantor, or donor, by reason of the want of heirs**; and this happens whenever the tenant of the land dies

without leaving any heir capable of inheriting.” 2 William Blackstone, *Commentaries on the Laws of England* 244 (1766).

Blackstone’s description reflects the settled historical understanding: escheat is not custodial, provisional, or temporary. It is the **final vesting of ownership** in the sovereign because all private claims have failed. American courts and legislatures adopted this understanding. Escheat historically functioned as a rule of **last resort**, triggered only after the exhaustion or failure of private succession.

B. Oregon’s Statutory Treatment of Escheat Reflects That Traditional Understanding

Modern statutes necessarily implement escheat through procedural mechanisms, but Oregon law continues to distinguish between **custodial possession** and **final vesting by escheat**.

Under Oregon probate law, property escheats to the state only when there are no heirs or devisees entitled to take. See, e.g.:

- **ORS 112.055** (estate passes by escheat to the state if there is no taker);
- **ORS 116.253** (procedures governing distribution of escheated estates).

By contrast, Oregon’s unclaimed property statutes expressly preserve the rights of owners and heirs and treat state possession as custodial rather than absolute. For example:

- **ORS 98.302** defines terms related to unclaimed property, including “owner” as a person having a legal or equitable interest in the property;
- **ORS 98.392** preserves the owner’s right to reclaim property at any time, without a statute of limitations.

These statutes do not define constitutional escheat, nor could they. But they reflect a consistent legal distinction: **property that remains perpetually subject to private claim has not vested in the state by escheat in the traditional sense**.

C. Implications for Article VIII

The absence of a judicial definition of escheat in Oregon constitutional case law does not expand **Article VIII’s** reach. Instead, it reinforces the point that courts have not treated **Article VIII** as attaching to property merely because the state holds it or administers it subject to future claims. Historically and legally, escheat refers to **final vesting** of ownership in the sovereign. **Article VIII’s** reference to property accruing to the state by escheat is therefore most naturally read as addressing property that has reached that point of finality—not property held provisionally, custodially, or subject to reclamation. Nothing in Oregon case law suggests that **Article VIII** constitutionalizes custodial holdings or freezes legislative discretion over funds that have not vested in the Common School Fund.

IV. HB 4075 Operates Outside the Common School Fund and Prior to Escheat

HB 4075 authorizes the State Treasurer to make loans only from balances held **outside the Common School Fund**, does not loan Common School Fund assets, and requires full repayment of principal, interest, and fees to the originating fund.

Consistent with the historical and statutory understanding of *escheat* described above, the bill does not involve property that has vested in the state by escheat or otherwise become part of the Common School Fund's constitutional principal. Instead, it applies to state-held funds that remain subject to statutory conditions and, where applicable, private claims.

Accordingly, **HB 4075** does not divert, impair, or encumber money that is part of the Common School Fund, nor does it alter constitutional restrictions governing that Fund. Rather, it operates upstream of both escheat and constitutional dedication, within the Legislature's recognized authority to manage state-held property and financial mechanisms so long as the constitutional protections applicable to the Common School Fund itself are fully respected.

V. Practical Considerations Relevant to the Committee

In addition to the constitutional issues discussed above, several pragmatic considerations merit attention. **First, HB 4075 is tightly constrained and administrable as drafted.**

The bill caps loan exposure at 20 percent of the fund, limits eligible borrowers to a narrow class of publicly governed rural hospitals, restricts use of proceeds to stabilization and refinancing, and places lending decisions with the State Treasurer, subject to professional fiduciary standards and Oregon Health Authority review. This is not an open-ended financing program.

Second, the bill does not convert the Unclaimed Property and Estates Fund into a general-purpose bank. The fund already operates as a managed, investable pool with reserves calibrated to claims experience. **HB 4075** adds a carefully defined investment tool without altering the fund's custodial obligations or liquidity requirements.

Third, the risk profile is asymmetric if no action is taken. The failure of Bay Area Hospital would impose immediate and externalized costs on the region and the state, including emergency transport, delayed care, and higher Medicaid expenditures. **HB 4075** allows the state to address a known risk through a controlled, repayable instrument rather than absorbing diffuse downstream impacts.

Fourth, Bay Area Hospital is actively engaging with the State Treasurer to ensure the program is workable and appropriately safeguarded. We have a scheduled meeting with the Oregon State Treasury on Monday (at 9:00 to 10:30 in H-470, legislators please come by), and we are prepared to discuss additional sideboards that may assist the Treasurer in exercising this authority prudently, including:

- adequate collateralization of any loan, including hospital land and facilities appraised in excess of **\$125 million in 2025**;
- inclusion of a statutory **sunset**; and

- any additional terms necessary to ensure fiscal discipline and fiduciary compliance.

Bay Area Hospital remains open to constructive amendments that preserve the bill's core purpose while strengthening its safeguards.

VI. Education Funding and Public Health

Bay Area Hospital fully recognizes the Legislature's constitutional obligation to educate Oregon's children, and nothing in **HB 4075** diminishes that obligation or the constitutional protections afforded to the Common School Fund. As discussed above, Article VIII protects the Common School Fund itself and applies once property has vested in the Fund through constitutional dedication, including final vesting by escheat. **HB 4075** respects those boundaries. It does not encumber Common School Fund assets, does not involve finally escheated property, and does not alter the constitutional framework governing education funding.

At the same time, the Legislature is charged with protecting the health and safety of Oregonians. That responsibility presumes functioning communities and access to essential health services. In rural and coastal Oregon, the continued operation of a community hospital is not ancillary to that mission; it is foundational. **HB 4075** allows the state to address an acute public health risk through a lawful, narrowly tailored, and fully repayable mechanism that preserves the integrity of the Common School Fund while supporting the continued availability of emergency and inpatient care.

Conclusion

The constitutional arguments raised in opposition to **HB 4075** rely on an expansive reading of **Article VIII** that is not supported by Oregon case law, historical legal meaning, or Attorney General interpretation. Oregon courts have consistently protected the Common School Fund as a constitutional entity, but they have not treated all upstream custodial holdings or state financial mechanisms as constitutionally immobilized. As demonstrated above, *escheat* has a settled historical meaning tied to final vesting of ownership, and **Article VIII's** protections attach accordingly. **HB 4075** operates prior to that point, outside the Common School Fund, and within the Legislature's recognized authority to manage state-held property while fully respecting constitutional limits.

From a practical perspective, the bill is narrow, disciplined, and responsive to an immediate public health need. Bay Area Hospital remains committed to working with the State Treasurer and the Legislature to ensure that any authority granted is exercised prudently, with appropriate safeguards and fiscal discipline.

For these reasons, Bay Area Hospital respectfully urges the Committee to **support HB 4075**.

All best,

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