

OUS, Legislative Concept Proposals

As has been discussed, campus officials and staff have been investigating legislative concepts that would give the OUS greater flexibility in operations in order to better manage both revenues and expenditures. Legislative concepts are due to the Department of Administrative Services (DAS) in April 2010.

In filing legislative concepts, OUS has two options:

1. File a complete request containing the full details regarding the proposed change; or
2. File a placeholder request which contains the general notion of the concept for which details will be provided later in the summer.

Given the on-going work of the Board's Governance and Policy Committee, the Governor's Reset Committee, and the possibility of an interim Legislative Joint Education Committee that would consider various flexibility proposals, we will probably want to file a placeholder for some type of governance/flexibility change.

The following concepts for legislative changes are presented for OUS Board consideration for submission in the 2011-2013 Legislative process:

1. Placeholder for governance change or other flexibility proposals – this could include changes to give OUS greater control over costs, including the various elements of employee compensation, changes in operating or capital budgeting processes, exemption from certain assessments, broader latitude in procurement, greater flexibility to manage legal affairs, broader authority to diversify revenues or other governance changes or flexibility initiatives.
2. Retain all income from the investment of all OUS cash balances – last session, we obtained the ability to invest our cash balances differently, but not the ability to retain the resultant income on the remaining 39 percent of funds, including tuition, auxiliary income, and other fees income – this change would allow OUS to retain 100 percent of that income. Currently, the investment earnings generated on student tuition and fees and other university operating revenues accrues to the State's General Fund and not to OUS.

OUS is requesting the authority to retain the investment earnings on all of its funds for the purpose of generating additional revenues to hold down tuition costs and improve services to students. This would require a statute expressly permitting such.

3. Currently, OUS has delegated authority from DAS only to purchase insurance coverage for student-related health insurance and special events (other than for liability) and fine arts coverage. OUS has benefited greatly from developing relationships with brokers and insurers, thus ensuring timely renewals and the best rates available. All other insurance coverage is provided or purchased by the Department of Administrative

Services (DAS) (see ORS 278.405 and 278.415 below). Staff believe that statutory ability to contract for all of its insurance coverage with other insurance agencies or groups created uniquely for universities, such as WICHE, will result in a more efficient, cost-effective system for obtaining insurance coverage. This would include authority to procure insurance/risk management coverage for property, tort, worker's compensation, athletic, student health, special events, and other types of insurance as needed. There are strong indications that other university systems around the country save substantially by obtaining their insurance through such groups. We are therefore seeking statutory authority to purchase all insurance coverage directly in the marketplace, as opposed to having DAS do this for OUS. This can be done by exempting OUS from the requirements contained in ORS 278.405-415 outlined below.

278.405 Department to manage risk management and insurance programs; rules. The Oregon Department of Administrative Services shall direct and manage all risk management and insurance programs of state government except for employee benefit insurance programs as otherwise provided in ORS chapter 243. Authority granted the department in this section includes but is not limited to the following authority:

(1) To provide all insurance coverages including coverage of related legal expenses required by law, requisitioned by individual agencies, or which the department determines necessary or desirable for the efficient operation of state government, including but not limited to casualty insurance, property insurance, workers' compensation insurance and surety insurance.

(2) To purchase insurance policies, develop and administer self-insurance programs, or any combinations thereof, as may be in the best interest of the state in carrying out the authorities granted in subsection (1) of this section.

(3) To consolidate and combine state insurance coverages.

(4) To purchase such risk management, actuarial and other professional services as may be required.

(5) To provide technical services in risk management and insurance to state agencies.

(6) To adopt rules and policies governing the administration of the state's insurance and risk management activities and to carry into full force and effect the provisions of this chapter, ORS 30.260 to 30.290, 278.322 and 655.505 to 655.555. The department, by rule or policy, may determine the Insurance Fund's contribution to the cost of defense, settlements and judgments in actions or proceedings. The department may condition payment of all or part of any loss covered by the Insurance Fund on compliance with the rules and policies adopted under this chapter. [1985 c.731 §2; 1991 c.566 §6]

278.415 Department authorization of agency insurance purchases; exceptions.

(1) A state agency may not purchase insurance except as authorized by the Oregon Department of Administrative Services and in accordance with the terms, conditions and procurement methods as may be established by the department, except for the transaction of workers' compensation insurance and reinsurance business by the State Accident Insurance Fund Corporation.

- (2) This section does not apply to:
- (a) Professional liability insurance acquired under ORS 9.080 (2);
 - (b) Insurance for employee benefits; or
 - (c) Loan cancellation life insurance procured by the Department of Veterans' Affairs under ORS 407.465. [1985 c.731 §3; 2009 c.29 §2]
4. Obtain biennial funding for prospective faculty salary increases/step-increases. Currently, in the Essential Budget Level (EBL) build up process each biennium, OUS receives a one-salary-step (4.75 percent) increase for all classified staff that are not at the top of their respective salary ranges. In addition, any salary increases that were granted to both classified staff and unclassified faculty and staff in the prior biennium are rolled-up for EBL purposes. However, there are no prospective salary increases provided for faculty in the EBL process. Staff believe that this is one of the reasons why faculty salaries have lagged peers in other states and why classified personnel are much closer to their comparators in terms of total compensation than are faculty. Thus, staff are recommending a new statute that would require a "step" increase for all personnel be included in the OUS EBL. We project that this would equate to the following in 2011-2013:

Oregon University System – Calculation of Faculty Step Increase

Unclassified Salaries and pay annual base for 2011-2013	\$492,000,000
65% not at top step (equivalent to classified staff)	\$319,800,000
Step Increase = 4.75% - full year	\$15,190,500
Step increase for one-half year	\$7,595,250
Projected OPE Rate = 29.15%	<u>\$6,642,046</u>
Total Projected Cost of One-step per year	\$29,427,796
General Fund - Fund Split = 34.2%	\$10,064,306

5. Obtain biennial funding for enrollment growth. Currently the Essential Budget Level (EBL) does not include any factor for enrollment growth. This forces OUS to submit a policy package request each biennium which has resulted in limited funding for enrollment increases. This is contrasted to K-12 which, as part of its budget build-up process each biennium, receives an allocation to cover the added costs associated with projected enrollment increases for the upcoming biennium.

Requiring enrollment funding based on projected enrollments would place OUS on a basis comparable with K-12 and would generate significant resources to serve these growing enrollments. Based on a projected 2 percent annual enrollment increase this would generate the following:

Average Cost per Student FTE in 2008-09	\$11,500
Estimated Cost per FTE in 2011-12	\$12,566
Estimated Cost per FTE in 2012-13	\$12,943
Projected Fundable Enrollments in 2010-11	65,615
Estimated growth in 2011-2013 (2% per year)	
First year	1,312
Second Year	<u>2,651</u>
Total New FTE projected in 2011-2013	3,963
Projected Incremental Costs in 2011-12	\$16,490,835
Projected Incremental Costs in 2012-13	\$34,306,948
Total Projected Biennial Costs	\$50,797,783
State General Fund Share of Projected Costs = 31.4%	\$15,950,504

6. Revenue bonding authority – although we have general authority for such under ORS 351.315 (see excerpt below), Bond Counsel believes that we need to add additional statutory language to make it fully operational. Bond Counsel’s suggested legislative changes are outlined in Attachment A.

351.315 Borrowing money and issuing bonds for purchase of real property. In carrying out the power and authority granted by ORS 351.140 or 351.160, the State Board of Higher Education may request the State Treasurer to borrow money and issue bonds, as defined in ORS 286A.001, secured by the pledge of the real property to be acquired and revenues, as provided in ORS 351.140 or 351.160. Such bonds shall be issued in accordance with the provisions of ORS chapter 286A. [Formerly 351.520; 2007 c.783 §144]

7. **New Campus Police Authority Statute.** This new statute would provide the State Board of Higher Education the ability to authorize one or more of the institutions under its control to employ and retain state certified police officers. These police officers would possess powers and authority given by statute to peace officers (defined at ORS 133.005(3)) and police officers (defined at ORS 181.610(14)) of this state. Such individuals shall be considered employees of the hiring institution and accountable to the President and/or his/her designee. Police officers authorized under this statute shall complete training necessary for certification as police officers at an academy operated or authorized by the Department of Public Safety Standards and Training. Under this statute each university authorized to employ its own police officers would be considered a criminal justice agency for purposes of ORS 181.715, 181.720 and 181.730 and a law enforcement unit within the meaning of ORS 181.610 (12) (a). The State Board would possess the ability to govern certain aspects of police services through administrative rulemaking.

Revise ORS 352.385 “Special Campus Security Officer” Statute. This concept provides modifications to ORS 352.385 (Special campus security officers; authority; training; expense) to enhance the capabilities of “special campus security officers” for those Oregon University System institutions choosing to develop a bifurcated campus safety model (i.e., police and security hybrid, including but not limited to, those institutions that contract with a cognizant law enforcement agency) and/or for those wishing to retain their current non-sworn model.

The proposed modifications to this statute include:

- (1) Replace the term “special campus security officers” with “university public safety officers” to distinguish OUS officers from traditional security guards/officers who do not possess similar authorities.
 - (2) Eliminate statutory restriction on the number of university public safety officers [special campus security officers] that can be employed by the Oregon University System which is currently set at fifty (50).
 - (3) Classify university public safety officers [special campus security officers] as peace officers as defined in ORS 133.005 to clarify authority to make arrests and related police procedures to include community caretaking.
 - (4) Include statutory language that permits university public safety officers [special campus security officers] the ability to issue criminal citations (ORS 133.055) and violation citations (ORS 153.005/153.039).
 - (5) Define university public safety officers [special campus security officers] as enforcement officers and police/peace officers for the purpose of issuing criminal citations and violation citations.
 - (6) Require the Department of Public Safety Standards and Training (DPSST) to issue DPSST numbers to all commissioned OUS university public safety officers [special campus security officers] and maintain related training records as provided by the employing agency.
 - (7) Clarify the Department of Public Safety Standards and Training’s responsibility under ORS 352.385(2) to train university public safety officers [special campus security officers] such that an annual basic university public safety officer academy is established and that DPSST will certify those officers upon successful completion of such training.
8. Exempt OUS from power companies first right of refusal for any renewable energy projects and remove the requirement that one-half of savings resulting from such activity accrue to the State’s General Fund. Currently ORS 469.754 requires state agencies who develop renewable energy projects to first seek first right of refusal from local utility providers to jointly develop, finance, operate, and otherwise act together in the development and operation of such projects (see law below). However, when utilities are called informing them of our intent to do so, they seem unaware of such requirements and are disinterested in such. In addition, this statute requires that 50 percent of the net savings from such projects be deposited in the State’s General

Fund. Given that the risk of developing such projects lies with the institutions themselves, we suggest that these sections of ORS 469.754 be repealed.

469.754 Authority of state agencies to establish projects; use of savings; rules.

(1) State agencies are authorized to enter into such contractual and other arrangements as may be necessary or convenient to design, develop, operate, and finance projects on-site at state owned or state rented facilities. In developing such projects, state agencies shall offer a right of first refusal of two months for conservation and direct use renewable resources and three months for cogeneration and generating renewable resources to each local utility providing utility service to the agency to jointly develop, finance, operate, and otherwise act together in the development and operation of such projects. The State Department of Energy shall adopt rules to establish the procedure by which the right of first refusal shall be administered. In adopting the rules, the department shall insure that the local utility providing utility service to the state agency is entitled to the first right to negotiate with the state agency and that the utility is entitled to match any offer made by any other entity to participate in the project. The department also shall adopt procedures that insure that the right to first negotiate and the right to match any offer applies to the sale of electrical or steam output from the project.

(2)(a) For as long as a project established under ORS 469.752 to 469.756 produces savings:

(A) A state agency's budget shall not be cut because of savings due to the project; and

(B) A state agency shall retain 50 percent of the net savings to the state agency after any project debt service.

(b) Savings from a project shall be deposited in a revolving fund administered by the state agency.

(3) A state agency shall spend the savings under subsection (2) of this section to increase productivity through:

(a) Energy efficiency projects;

(b) High-tech improvements, such as the purchase or installation of new desktop or laptop computers or the linkage of computers into systems or networks; or

(c) Infrastructure improvements.

(4) The moneys credited to the revolving fund may be invested and reinvested as provided in ORS 293.701 to 293.790. Notwithstanding ORS 293.105 (3) or any other provision of law, interest or other earnings on moneys in the revolving fund shall be credited to the revolving fund.

(5) The remaining 50 percent of net savings to the state agency after any project debt service shall be deposited in the General Fund.

(6) Nothing in ORS 469.752 to 469.756 authorizes a state agency to sell electricity to an entity other than an investor-owned utility, a publicly-owned utility, an electric cooperative utility, or the Bonneville Power Administration.

(7) Nothing in ORS 469.752 to 469.756 limits the authority of a state agency conferred by any other provision of law, or affects any authority, including the authority of a municipality, to regulate utility service under existing law. [1991 c.487 §2; 1993 c.86 §2]

Note: See note under 469.752.

Staff Recommendation to the Board:

Staff recommend that the Board approve the legislative concepts as outlined above for submission to the Department of Administrative Services and the Governor.

ATTACHMENT A

DRAFT LEGISLATION AUTHORIZING HIGHER EDUCATION REVENUE BONDS

Section 1. Definitions. As used in this Act, unless the context requires otherwise:

(1) “Higher education revenues” means all tuition, building fees and other charges imposed or collected by the Oregon University System and any of its universities from students and other recipients of products or services and users of properties of the Oregon University System or any of its universities. “Higher education revenues” also includes any amounts provided to the Oregon University System or any of its universities by the Oregon legislative assembly, if those amounts may legally be expended to pay higher education revenue bonds.

(2) “Bond-related costs” means:

(a) The costs and expenses of issuing, administering, and maintaining higher education revenue bonds, including but not limited to, costs of paying or redeeming higher education revenue bonds, paying amounts due in connection with credit enhancement devices or agreements for exchange of interest rates, paying the fees, administrative costs, and expenses of the State Treasurer and the Oregon University System, and paying the fees and costs of consultants or advisors retained by the State Treasurer or the Oregon University System for the higher education revenue bonds;

(b) The costs of funding any higher education revenue bond reserves;

(c) Capitalized interest for higher education revenue bonds;

(d) Rebates or penalties due to the United States in connection with higher education revenue bonds; and

(e) Any other costs or expenses that the State Treasurer or the Chancellor of the Oregon University System determines are necessary or desirable in connection with issuing and maintaining the higher education revenue bonds, including payment of amounts due in connection with agreements for exchange of interest rates and credit enhancement devices for higher education revenue bonds.

(3) “Higher education revenue bonds” means revenue bonds issued pursuant to Section 2 of this Act.

Section 2. Issuance of Higher Education Revenue Bonds; Security. (1) The State Treasurer, at the request of the Chancellor of the Oregon University System, may issue higher education revenue bonds from time to time: to finance any [capital] projects that the State Board of Higher Education determines will assist the Oregon University System in carrying out its statutory powers, to refund any obligations issued for such projects, and to pay bond-related

costs. Higher education revenue bonds shall be issued in accordance with the provisions of ORS chapter 286A.

(2) Each higher education revenue bond shall be a special obligation of the State of Oregon that is payable solely from the higher education revenues and other amounts that are pledged or otherwise committed to pay that higher education revenue bond in accordance with this Act. Higher education revenue bonds shall not be general obligations of the State of Oregon or of the Oregon University System and neither the faith and credit of the State of Oregon nor its taxing power shall be pledged or committed to the payment of higher education revenue bonds.

Section 3. Higher education revenue bond sinking fund. (1) The higher education revenue bond sinking fund is established in the State Treasury, separate and distinct from the General Fund. The Oregon University System may instruct the State Treasurer to create separate subfunds in the higher education revenue bond sinking fund to secure higher education revenue bonds and agreements for exchange of interest rates and credit enhancement devices that are obtained in connection with higher education revenue bonds.

(2) Higher education revenues and proceeds of higher education revenue bonds shall be credited to the subfunds of the higher education bond sinking funds in the amounts and at the times specified in the higher education revenue bond covenants that are made pursuant to Section 4 of this Act.

(3) The amounts that the state is obligated to credit to the subfunds of the higher education revenue bond sinking fund by the higher education revenue bond covenants, and the amounts actually credited to those subfunds, are continuously appropriated only for the purpose of: (a) paying, when due, the principal of and the interest and premium, if any, on the higher education revenue bonds that are secured by those subfunds, (b) paying amounts due under agreements for exchange of interest rates and credit enhancement devices for higher education revenue bonds, and (c) paying bond-related costs.

(4) The moneys in each subfund of the higher education revenue bond sinking fund shall be used and applied in accordance with the higher education revenue bond covenants that are made pursuant to Section 4 of this Act.

(5) Earnings on amounts in the higher education revenue bond sinking fund shall be credited to the higher education revenue bond sinking fund and shall be distributed among the subfunds in the higher education revenue bond sinking fund as provided in the higher education revenue bond covenants that are made pursuant to Section 4 of this Act.

Section 4. Commitments of higher education revenues; bond covenants.

The Chancellor of the Oregon University System, with the consent of the State Treasurer, may, on behalf of the State of Oregon:

(1) Identify the higher education revenues that will secure each series of higher education revenue bonds and any agreements for exchange of interest rates and credit enhancement devices obtained in connection with those higher education revenue bonds, pledge the identified higher education revenues to secure those obligations, and specify the status of the lien of each pledge.

(2) Enter into agreements for exchange of interest rates and credit enhancement devices for

higher education revenue bonds in accordance with ORS Chapter 286A and agree to pay amounts due under those agreements and devices, but solely from higher education revenues that the state agrees to credit to the higher education revenue bond sinking fund.

(3) Enter into covenants on behalf of the State of Oregon for the benefit of owners of higher education revenue bonds, any counterparties to agreements for exchange of interest rates and providers of credit enhancement for higher education revenue bonds, to:

(a) Deposit specified portions of the higher education revenues into specified subfunds of the higher education revenue bond sinking fund on specified dates and to maintain balances in those subfunds at specified levels.

(b) Adjust the rates and charges that produce higher education revenues so that higher education revenues equal or exceed specified levels during specified periods.

(c) Comply with the applicable requirements of federal law so that interest on higher education revenue bonds is excludable from gross income under the federal income tax laws or so that higher education revenue bonds qualify for federal interest subsidies.

(d) Only create pledges or liens on higher education revenues that are permitted by the covenants authorized by this section.

(e) Budget and appropriate or otherwise allow higher education revenues to be applied in amounts that, when added to other funds lawfully available for the purpose, will be sufficient:

(i) To pay in full and when due the principal, interest, and premium on all outstanding higher education revenue bonds;

(ii) To maintain the required balance in any reserves established for higher education revenue bonds; and

(iii) To pay amounts due in connection with agreements for exchange of interest rates and credit enhancement devices for higher education revenue bonds.

(f) To own and continue to operate the properties of the Oregon University System in compliance with the higher education revenue bond covenants until all higher education revenue bonds are paid or defeased.

(4) Any covenants made under this section for the benefit of owners of higher education revenue bonds, for any counterparties to agreements for exchange of interest rates, and for providers credit enhancement devices for higher education revenue bonds shall constitute contracts between the State of Oregon and those owners, counterparties, and providers.

(5) The State Treasurer or the Chancellor of the Oregon University System may, on behalf of this state, enter into any other agreements that the State Treasurer or the Chancellor determines are necessary or appropriate to issue and sell higher education revenue bonds and carry out this Act.

Section 5. Higher Education Revenue Bond Project Fund.

(1) The higher education revenue bond project fund is established in the State Treasury, separate and distinct from the General Fund. Proceeds of higher education revenue bonds shall be credited to the higher education revenue bond fund until they are disbursed in accordance with subsection 2 of this section. The Oregon University System may instruct the State Treasurer to create separate subfunds in the higher education revenue bond project fund to assist in accounting for proceeds of different series of higher education revenue bonds.

(2) The proceeds of higher education revenue bonds that are credited to the higher education

revenue bond project fund are continuously appropriated for the purposes described in Section 2(1) of this Act.

CONFORMING AMENDMENTS

ORS 351.315 is repealed.

Section 3. ORS 351.460 is amended to read as follows:

(1) The State Board of Higher Education shall maintain with the State Treasurer a Higher Education General Obligation Bond Sinking Fund, separate and distinct from the General Fund. The Higher Education General Obligation Bond Sinking Fund shall comprise three separate subfunds to provide for the payment of the principal of and the interest upon general obligation bonds issued under authority of Article XI-F(1) of the Oregon Constitution and ORS 351.350, and under authority of Article XI-G of the Oregon Constitution and ORS 351.345, and amounts due under financial agreements entered into under ORS 351.356 in connection with general obligation bonds issued under authority of Article XI-F(1) of the Oregon Constitution and ORS 351.350. The moneys in the sinking fund are continuously appropriated to the Board for such purposes. The fund may be invested by the State Treasurer and the earnings from such investments shall be credited to the appropriate subfunds of the fund.

(2) The Higher Education General Obligation Bond Sinking Fund shall consist of all moneys received from ad valorem taxes levied pursuant to ORS 291.445, all moneys that the Legislative Assembly may provide in lieu of such taxes, all of the net revenues received from the projects or undertakings for the financing of which the general obligation bonds were issued, including gifts, grants and building fees, such unpledged revenues of buildings and projects of like character as shall be allocated by the Board, all moneys received as accrued interest upon such general obligation bonds sold, all earnings from investments of the fund, all proceeds of the sale of refunding general obligation bonds, and all moneys that the State of Oregon has agreed to hold in the Higher Education General Obligation Bond Sinking Fund to pay amounts due under financial agreements entered into under ORS 351.356. Moneys credited to the Higher Education General Obligation Bond Sinking Fund shall be credited to the appropriate subfunds of the fund.

[(3)The Board may credit the Higher Education General Obligation Bond Sinking Fund with moneys received from either a sale or interfund transfer of land, buildings, and facilities. When the land, buildings, or facilities are sold, or the use thereof is rededicated so that a transfer from one subfund to the other is appropriate, the moneys received shall be credited to the appropriate subfund.[Is this section still useful? It might only have been needed in connection with revenue bonds authorized ORS 351.315.]

(4) The Board shall apply student building fees, revenues, gifts, and grants for the payment of the principal of and the interest upon the bonds issued under authority of Article XI-F(1) of the Oregon Constitution and upon revenue bonds authorized by ORS 351.315 until such time as the proper subfund of the sinking fund and investments thereof, as supplemented by expected future income will, in the judgment of the Board, be sufficient to meet in full the principal of and the interest upon all such outstanding bonds. Except for student building fees, income not

thus required for the sinking fund shall be transferred to such other fund and account as the Board shall designate. Student building fees for buildings constructed from the proceeds of bonds issued under Article XI-F(1) of the Oregon Constitution or ORS 351.315 shall be applied only to those bonds authorized under Article XI-F(1) of the Oregon Constitution or ORS 351.315.

(5) The Board may create a subfund in the Higher Education General Obligation Bond Sinking Fund to pay amounts due under financial agreements entered into under ORS 351.356 and may credit to that subfund any moneys that the State of Oregon is obligated to use to pay those amounts due.

(6)(a) The Board may not use the sinking fund for any purpose other than the purposes for which the fund was created.

(b) Notwithstanding paragraph (a) of this subsection, the Board may transfer any surplus in the sinking fund to other funds designated by the Board if a balance remains in the sinking fund from sources other than student building fees for buildings constructed from the proceeds of bonds issued under Article XI-F(1) of the Oregon Constitution and:

(A) The purposes for which the fund was created have been fulfilled; or

(B) A reserve sufficient to meet all existing and future obligations and liabilities of the fund has been set aside.