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Legislative Session and Interim Budget Authorities

Oregon's budget authority varies throughout the biennial budget cycle. The Constitution and state statutes provide direction on the authority of the Legislature both during the period when the Legislature is in session and during interim periods between sessions. This budget information brief reviews the authorities for each, including some information on administrative and statutory budget authorities for the Executive and Judicial Branches of government.

General Authority

Under Article III (Distribution of Powers) of the Oregon Constitution, the power to exercise budgetary control over all executive and administrative officers and agencies is granted to the Legislative Assembly. Under Article IX, Section 2 of the Constitution, the Legislature is required to enact a balanced budget. The Constitution also provides for a joint legislative committee to allocate emergency fund appropriations and to authorize expenditures beyond budgetary limits during the interim period between legislative sessions. This entity is known as the Emergency Board and its authority is further defined both in the Constitution and in statute.

Oregon's financial administration policy is further defined in Chapter 291 of the Oregon Revised Statutes (ORS), which establishes the overall authority and guidelines for budget preparation and execution. Some language is specific, establishing deadlines for certain budget-related activities and requiring the completion of various budget-related reports, while other provisions are more general and allow for considerable flexibility in the budget development process. Additional provisions relating to the legislative role in determining budgets is found in ORS Chapters 171 and 173.

Major legislative decisions related to the budget are set by law. Oregon Laws, or "session laws," are all the bills and resolutions passed by the House and the Senate each legislative session. Oregon Revised Statutes are the codified laws of the state and incorporate all existing laws and any permanent legislative changes. Not all session laws or sections of bills are codified. The distinction between Oregon Laws and the ORS is important because budget bills are not codified in ORS; typically, authority within a budget bill is limited to a single biennium, with one notable exception being a capital construction bill, discussed in more detail below.

Schedule for the Creation and Adjustment of the Biennial Budget

The review and approval of budget authority follows the constitutional and statutory framework discussed above. The Legislative Assembly convenes annually each February. In odd

numbered years, the Legislature meets for no more than 160 days (the “long session”), to deliberate on and enact the adopted budget for state government for the upcoming biennium. Oregon’s process relies on enacting a separate budget bill for each state agency, rather than an omnibus budget bill, although an omnibus bill is developed at the end of the long session as well as in the short session to make final agency budget adjustments. During this period, the Legislature may also make changes to the current biennium’s budget. In even numbered years, the Legislature may meet for no more than 35 days (the “short session”) and may make changes to the adopted budget, but does not enact new budget bills for each state agency. Five-day extensions to the long and short sessions are allowed by a two-thirds vote in each chamber. A special legislative session can be convened by either the Governor or a majority of both chambers when the Legislature is not in regular session. Historically, special sessions have been called to deal with specific policy issues or when state revenues are decreasing and the budget needs to be reduced and rebalanced.

Upon adjournment of the legislative session in odd numbered years, the Emergency Board is immediately convened to establish its interim existence; however, the Emergency Board does not typically meet until after the next short session, and then meets quarterly in even numbered years until the convening of the next long session in February of odd numbered years. Between the conclusion of the long session and the convening of the short session, the Interim Joint Committee on Ways and Means meets quarterly, but this body has no authority to modify budgets. If a budget emergency exists, the Emergency Board may be convened on an ad hoc basis at any time between sessions.

To summarize, the budget passed by the Legislature at the conclusion of the long session is known as the legislatively **adopted** budget. Budgetary actions or adjustments to a legislatively adopted biennial budget may occur during the following times:

- February session in even numbered years (the short session)
- Special session, if convened
- Emergency Board meetings
- February session in odd numbered years (the long session)
- Select Executive Branch administrative actions

The budget that is the result of these changes is known as the legislatively **approved** budget.

Budget Authority of the Legislative Assembly

The broadest budgetary authority in both the Oregon Constitution and statute is granted to the Legislative Assembly. To implement a budget decision, a budget bill or a policy bill with a budget impact, must be passed by the Legislature and signed into law by the Governor.¹ Once law, the enacted budget reflects the priorities of the Legislative Assembly for a single biennium and becomes the legislatively adopted budget.

In either agency budget bills, policy bills with a budgetary impact, or an omnibus bill, the Legislature can appropriate General Fund; allocate Lottery and Other Funds; establish Lottery, Other, and Federal Funds expenditure limitations; and provide authority for Nonlimited expenditure limitation for Other and Federal Funds. It is important to note that, in general,

¹ The Governor may veto a budget bill or a line within a budget bill, but may not substitute new language or dollar amounts for the vetoed measure or provision.

Other and Federal Funds flow directly to a state agency. The Legislature spends a significant amount of time evaluating the funding requirements of the “other” and “federally” funded programs, just as it does for General or Lottery funded agencies. The establishment of Other and Federal Funds limitation actually puts a cap on how much of the Other and Federal Funds revenue received by an agency may be spent; without a specified expenditure limitation, there is no limit on how much of the Other and Federal Funds revenue is spent. In certain cases, such as Unemployment Insurance payments, the Legislature has determined that a cap or limitation is not needed and provides that the agency has Nonlimited expenditure authority for that specific fund or program. These Nonlimited expenditure authorities are specifically identified in budget bills.

In addition to granting spending authority to state agencies, the Legislature may reduce, rebalance, or de-fund agency programs or budgets. This includes the transfer of programs and budget authority within, as well as between, agencies. The Legislature may also provide more, or less, budget flexibility to an agency through the budget bill. For example, the budget bill may be as simple as specifying that the General Fund amount authorized is for agency programs and operations, or, the bill may specify amounts that may be expended for specific agency programs and operations. In the first case, the agency may move money between programs as it deems appropriate; in the second case, the agency must come back and get authorization from the appropriate legislative body to rebalance funds if it believes it is needed.

The Legislature also authorizes the establishment of state positions and full-time equivalents (FTE) or changes to existing positions and FTE. While such changes are not included in Oregon laws or ORS, they are memorialized in a document known as a budget report. A budget report provides detail on legislative action and intent for a budget bill or a policy bill with a budgetary impact. Budget reports are only prepared during a legislative session and may include instructions to an agency; a budget note; and/or requests to unschedule funds from allotment for those agencies subject to the Governor’s allotment authority, which is discussed later in this document.

The Legislature can also authorize bond issuances, or certificates of participation, for information technology and capital projects. Projects in excess of \$1 million that build, acquire, adapt, replace, or change the use or function of a facility are categorized as capital construction projects. The Legislature typically provides six-year expenditure limitation for new capital construction projects, which the Legislature may extend or otherwise modify. Information technology projects are budgeted on the standard two-year (biennial) budget cycle.

The Legislature reviews and approves federal grant application requests. The purpose of the requirement is to retain legislative control of federal initiatives that could potentially create future state funding obligations. This statutory requirement does not apply to grants from non-federal public or private sources nor to previously approved federal grants.

The Legislature is also authorized to raise revenue. In general, this type of action will require approval by two-thirds of the members. While this activity is overseen by the revenue committees rather than the budget committees, the state budget must ultimately balance to anticipated revenues. One form of revenue that is generally managed through the legislative budget process is specific agency fees. In general, state agency fees are either set at a specific

level in statute; limited to a maximum amount in statute with an allowance for an agency to increase fees up to the maximum through administrative rule; or statute provides the authority to the agency to set the fee through administrative rule. All fees established or increased after the end of one regular legislative session are rescinded unless approved by the Legislature before the end of the next regular legislative session the following calendar year. This means that state agencies may need the Legislature to ratify fees adopted by rule, which is generally done with a fee bill. A fee bill is also required to change a statutory fee or fee limit.

While not directly impacting the biennial budget appropriations, allocations, or expenditure limitations, the Legislature typically enacts legislation to make the necessary changes in ORS or Oregon Laws to support the legislatively adopted budget. Such a measure is commonly called the “program change” bill. Within this bill is typically where direction is given for agencies to transfer excess funds to the General Fund for general governmental purposes (“reappropriations” or “fund sweeps”). The program change bill does not appropriate money so is not subject to the Governor’s line-item veto authority. In addition, agency performance measure data is reviewed as part of the biennial budget process and the actions are included in the budget report for each agency’s primary budget bill.

Emergency Board

The Oregon Constitution authorizes the Legislature to establish a joint committee, known as the Emergency Board, to exercise certain powers during the interim between sessions of the Legislative Assembly (Article III, section 3 of the Oregon Constitution and ORS 291). These powers include allocating funds appropriated by the Legislature for emergencies, increasing Other and Federal Funds expenditure limitations, establishing or revising budgets for new activities, authorizing transfers within agency budgets, creating or adjusting state agency positions and FTE, and reviewing federal grant applications. The Emergency Board can provide specific instruction to agencies, similar to a budget note that is included in a budget report during the long session. As with a budget note, while such direction is not law, agencies can expect that the Legislature will follow up on whether such direction was followed. The Emergency Board may also request from the Department of Administrative Services that funds be unscheduled through the allotment process, which is discussed under the section on Executive and Judicial Branch Authority below.

The Constitution authorizes the Legislature to determine what constitutes an emergency for purposes of action by the Emergency Board. In statute, it is defined as “any catastrophe, disaster or unforeseen or unanticipated condition or circumstance, or abnormal change of conditions or circumstances” affecting state agency functions and related expenditures. The Emergency Board has “exclusive authority” to determine what constitutes an “emergency,” and it may allocate Emergency Funds for any activity authorized by law.

The Emergency Board does not have authority to directly appropriate funds; rather, the Board allocates amounts to state agencies from emergency fund appropriations it may receive. The Legislature, during the long session, generally disappropriates any remaining balance of Emergency Board appropriations from the current biennium, as well as appropriates General Fund to the Emergency Board in the legislatively adopted budget for the next biennium. There are typically multiple appropriations made to the Emergency Board: one for general purpose use and one or more for special purposes.

A special purpose appropriation is made to the Emergency Board to assure availability of funding for a specific potential contingency. It might also be used as a means of withholding funds until some specified condition is met by an agency. Nearly always, special purpose appropriations have a “reversion” clause specifying that funds not allocated by a certain date are available to the Emergency Board to allocate for any lawful purpose. In addition to special purpose appropriations, the Legislature may establish an Emergency Fund “reservation” for a specific purpose. In contrast with special purpose appropriations, reservations are not authorized in Oregon Laws. They are established either in the budget report for the Emergency Board or later by action of the Board itself. A reservation simply “sets aside” an amount within the Emergency Fund appropriation for the specific purpose. A reservation can be terminated by the Board at any time, and will expire with the final meeting of the Board, which occurs just prior to the convening of the long session in February of odd numbered years.

The Emergency Board may also increase, transfer, or establish new capital construction expenditure limitations; however, any newly established capital construction expenditure limitation is only for the remainder of the biennium rather than the standard six-year limitation established by the Legislature. Agencies can request a project extension and/or additional limitation if a project’s completion extends beyond the end of the current biennium. Emergency Board approved capital construction projects are generally financed with an existing revenue stream other than bond funding, as the Emergency Board has no authority to authorize bonding or to modify legislatively approved bond limits.

In addition to reviewing budgetary requests, the Emergency Board also exercises legislative oversight of policy and programs through the review of reports from state agencies on specific budget or program issues. Such reports (which are non-action items), are often the result of direction in budget reports or legislation from the long session, although state agencies may voluntarily request that the Emergency Board consider a report.

It is important to note that the Emergency Board is not authorized to reduce an appropriation or expenditure limitation unless it is part of a transfer that is balanced by an equivalent increase elsewhere within the same agency. The Emergency Board’s power to authorize the transfer of existing appropriations, including expenditure limitations, applies only within an agency budget. Such budgetary transfers are used for internal budget rebalancing, to implement agency reorganizations, and as an alternative to an expenditure limitation increase where there is excess limitation in another agency budget line item. In addition, the Emergency Board has no authority to establish a new fee or to modify an existing fee, other than that previously authorized by statute.

Approved Emergency Board actions for each meeting are certified with the Secretary of State, which becomes the legal authority by which agency budgets are adjusted during the interim. As noted previously, the Emergency Board typically meets quarterly, beginning in May of even numbered years until the convening of the next legislative session in February of odd numbered years (the long session), although it may meet on an ad hoc emergency basis as needed between sessions.

Interim Joint Committee on Ways and Means

With voter approval of annual regular sessions, the Legislature has established a calendar of quarterly activities between legislative sessions, commonly referred to as “Legislative Days,” to

convene interim legislative committees. Because these meetings are outside a legislative session, the legal authority of interim committees is limited. Interim committees may request and hear reports and prepare legislative concepts.

By statute, the Interim Joint Committee on Ways and Means (IJWM) has slightly broader authority than many interim committees beyond the ability to introduce legislative concepts, and can also hear and approve receipt of reports and federal grant requests. In addition, IJWM can review and make recommendations to the Joint Committee on Ways and Means (JWM) on items to be included in the omnibus budget measure for the short session. Given the abridged timeframe of this session, this process allows the Legislature to focus on a smaller set of budgetary requests for inclusion in the omnibus measure. In general, the membership of IJWM and JWM include many of the same legislators; this crossover facilitates this process.

Executive and Judicial Branch Authority

In general, the Executive and Judicial Branches are charged with the execution of the budget for their respective branches of government, or, in other words, implementing the programs and services as directed and funded by the Legislature. The Legislature has delegated additional, though limited, budgetary authority to the Executive and Judicial Branches, including the ability to increase Nonlimited expenditure limitations for Other and Federal Funds, if statutorily authorized, and authorizing the implementation of an interim fee increase (with prior approval from the Director of the Department of Administrative Services for Executive Branch agencies or the Chief Justice for Judicial Branch agencies).² In addition, the Governor and the Chief Justice have the authority to determine which agency requests under their purview may advance to the Emergency Board; however, the Emergency Board itself may make its own request and set its own agenda.

The Executive Branch also has limited authority to establish positions; it may establish a position as part of a reclassification, but must stay within overall resources authorized for positions for that specific agency. This is known as a permanent finance plan and is designed to ensure that actions are not taken during the interim that result in a need for additional resources in the future beyond what was anticipated in the biennial budget. The Department of Administrative Services (DAS) has the authority to move vacant positions from one agency to another. This authority is rarely used, because the statute only authorizes DAS to move a vacant position and not the expenditure limitation or appropriation, which requires legislative or Emergency Board action.

DAS is responsible for allotting authorized budgets across the eight quarters of the biennium for those agencies subject to allotment authority, which are all agencies other than those in the Judicial Branch, the Treasurer of State, the Secretary of State, and the Legislative Branch. This action results in an anticipated spending plan for state agencies which is monitored both by DAS and by the Legislative Fiscal Office to see how actual expenditures compare to what was anticipated. Only funds included on the allotment plan may be spent by agencies. By voluntary agreement with the Legislature and the Emergency Board, funds can be unscheduled or scheduled, upon request, by DAS. Statute also gives the Governor the authority to reduce allotments by across-the-board reductions, if forecasted General and Lottery Fund revenues

² There are other noteworthy examples of legislative delegation of authority to the Executive Branch, such as collective bargaining, which fall outside the scope of this brief.

are less than authorized budgets. This is done until the Legislature can meet, either in regular session or special session, to adjust revenues and/or expenditures of the state.

Summary Table

The following table summarizes the various budget authorities between session and the interim.

Budget Authority	Legislative Assembly	Emergency Board	Interim JWM	Executive Branch	Judicial/ Legislative Branch
Appropriate General Fund	Yes	No	No	No	No
Allocate General Fund	Yes	Yes	No	No	No
Reduce General Fund	Yes	No	No	No	No
Allocate Other Funds	Yes	No	No	No	No
Establish expenditure limitation	Yes	Yes	No	No	No
Increase expenditure limitation	Yes	Yes	No	No	No
Reduce expenditure limitation	Yes	No	No	No	No
Rebalance budget within agencies	Yes	Yes	No	No	No
Transfer budget/programs between agencies	Yes	No	No	No	No
Establish Nonlimited authority	Yes	No	No	No	No
Modify Nonlimited limitation	Yes	Yes	No	Yes	Yes
Establish/modify positions/FTE	Yes	Yes	No	Yes	Yes
Authorize bonds	Yes	No	No	No	No
Establish capital construction limitation	Yes	Yes	No	No	No
Modify capital construction limitation	Yes	Yes	No	No	No
Establish fees	Yes	No	No	No	No
Modify fees	Yes	No	No	Yes	Yes
Approve federal grant application	Yes	Yes	Yes	No	No
Reports - request or receive	Yes	Yes	Yes	No	No
Enact legislation	Yes	No	No	No	No
Allot funds	No	No	No	Yes	No
Unschedule funds	By request	By request	By request	Yes	By request
Budget note	Yes	No	No	No	No
Budget direction or instruction	Yes	Yes	Yes	No	No
Establish new programs and statutory funds	Yes	No	No	No	No
Reappropriate funds	Yes	No	No	No	No