



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

May 10, 2021

Representative Tina Kotek
Speaker of the House
900 Court Street NE Rm269
Salem OR 97301

Re: Transfers from Education Stability Fund

Dear Speaker Kotek:

You asked about the legality of a potential transfer from the Education Stability Fund (ESF) during the 2021 legislative session. We think such a transfer would likely be permissible.

The ESF is established under Article XV, section 4 of the Oregon Constitution. Section 4 (6) provides that the principal of the ESF can be accessed only if at least one of the specified trigger criteria are met. One of these criteria is that “a quarterly economic and revenue forecast projects that revenues in the state’s General Fund in the current biennium will be at least two percent below what the revenues were projected to be in the revenue forecast on which the legislatively adopted budget for the current biennium was based[.]” Section 4 (6)(a)(C).

This criterion requires comparing a quarterly forecast to the “revenue forecast on which the legislatively adopted budget for the current biennium was based.” We think this refers to the last forecast in the preceding biennium, as adjusted for regular session legislation. During the current (2019-21) biennium, this would be the May 2019 forecast, as adjusted to account for all 2019 regular session legislation.

We think the criterion is met if *any* quarterly revenue forecast in the 2019-21 biennium is at least two percent below the revenues forecasted in the adjusted May 2019 forecast. This is because the provision refers to “a” revenue forecast in the current biennium. If the drafters intended to mean only the most recent forecast, they could have said so, as demonstrated by the reference to the “last” forecast in a biennium in section 4 (6)(a)(A) (a separate trigger criterion allowing use of the ESF principal if “the last ... forecast for a biennium” indicates low revenues in the upcoming biennium). In other words, we think that if any quarterly revenue forecast during the 2019-21 biennium satisfies the section 4 (6)(a)(C) criterion, then that criterion is satisfied for the entirety of the biennium (that is, until June 30, 2021), even if subsequent quarterly forecasts do not satisfy the criterion.

In September 2020, a portion of the ESF principal was transferred under chapter 7, Oregon Laws 2020 (second special session), based on the finding that the section 4 (6)(a)(C) criterion was met. The forecast that met the criterion in September 2020 still meets the criterion now. Thus, we think the use of the ESF principal is probably permissible for the remainder of the current biennium.

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Very truly yours,

DEXTER A. JOHNSON
Legislative Counsel

A handwritten signature in black ink, appearing to read "David Fang-Yen", with a long horizontal flourish extending to the right.

By

David Fang-Yen
Deputy Legislative Counsel