

Docket Item:

Sports Action Lottery background and Proposed OAR

Summary:

As part of the transition from OUS to the HECC, and a result of actions undertaken by the 2013 Oregon Legislature, the HECC is required to develop a new allocation formula for distributing the Sports Action Lottery Program. Assuming adoption by the Legislative Assembly of Sports Action Lottery Funds directed towards the public universities, the HECC will require OAR's on file to allocate said funds. The following docket item provides background on the Sports Action Lottery program and proposes an OAR, slated for adoption in August, which operationalizes an allocation formula which replicates past precedence and agreed upon by the seven public universities.

Docket Material:

What is the Sports Action Lottery?:

The Sports Action Lottery program stems from a funding program that was created to replace the funding lost when the legislature eliminated the Sports Action Lottery games in 2005. Before describing more detail of the current program, it is useful to go back and look at the initial creation and progress of the Sports Action Lottery program.

In 1989, the Oregon Legislature passed HB 3262 which gave the Oregon Lottery statutory authority to establish a sports betting program in order to raise money for intercollegiate athletics at the seven Oregon University System (OUS) institutions. Sports Action was launched in 1989 and was a betting game based on the outcome of NFL football games. Scoreboard, a second game based on the outcome of professional football, was introduced in 2003. Revenue generated by Sports Action and Scoreboard was statutorily restricted to benefit intercollegiate athletics and academic scholarships at Oregon's seven four-year colleges and universities.

In response to NFL and NCAA opposition to the Sports Lottery Program, the Oregon Legislature passed HB 3466¹ in 2005, which barred the Oregon Lottery from running sports betting games. HB 3466 replaced the revenue that had been collected from the sports betting games with a guaranteed 1% of the lottery funds transferred to the Economic Development Fund. HB 3466 also created a new "Intercollegiate Athletic Fund" in order to house these revenues².

The current statutory construction of the Sports Action Lottery is as follows:

¹ HB 3466 (2005), enrolled as Chapter 810 Oregon Laws 2005

<http://www.ous.edu/files/state_board/meeting/dockets/ddoc130920-fa2.pdf>

² Ibid.

HIGHER EDUCATION COORDINATING COMMISSION

June 11, 2015

ORS 461.543³ establishes the “Sports Lottery Account”, which is under the HECC’s control and consists of lottery funds from this Sports Lottery program. These funds are directed to be spent as follows: 88% to athletics and 12% to scholarships (with the scholarship funding split equally between need and merit-based scholarships). Under ORS 461.543(2), the HECC is required to distribute funds to institutions in proportions that consider (a) “The athletic conference to which the public university belongs and the relative costs of competing in that conference” and (b) “The level of effort being made by the public university to generate funds and support from private sources.” Funds appropriated to the Sports Lottery Account then flow to the Intercollegiate Athletic Fund established in ORS 461.535, and from there to individual institutions.

Under the guidelines of ORS 461.543(1):

- 70% funds expended via the Intercollegiate Athletic Fund must be spent on nonrevenue producing sports
- 30% must be spent on revenue producing sports
- At least 50% of all funding must go to women’s athletics

The amount of funding that can be provided to institutions is capped per ORS 461.543(5) at \$18,181,818 per biennium (inflation adjusted using 2013 dollars), with any amounts over that level going to the Office of Student Access and Completion in support of the Oregon Opportunity Grant. One percent of Lottery Revenue for the upcoming fiscal year is expected to be approximately \$11.4 million according to the public universities.

Background of Sports Action Lottery Funding Through the 2011-13 Biennium:

During the time the Sports Action Lottery games were in effect, funding levels were based on the level at which institutions competed, with the University of Oregon and Oregon State University receiving the majority of the funding, followed by Portland State and then the four smaller institutions receiving the least amount of funding⁴. Funding generated by these lottery games ranged from a high of \$5.3 million in the 1995-97 biennium to a low of \$4.2 million in the 2003-05 biennium, the last full biennium during which these lottery games were still being played⁵.

In response to the elimination of the Sports Action Lottery games by the 2005 legislature, the State Board of Higher Education subsequently adopted a new allocation formula which took effect on July 1, 2007 and remained in effect until the 2013-15 biennium⁶. Only during the 2007-09 biennium was a full 1% of lottery revenues given to public universities. In all subsequent biennia, the legislature has established a specific

³ ORS 461.543 and ORS 461.535 are included as appendices B and C respectively at the end of this document.

⁴ OUS Chancellor’s Office Budget Brief: Sports (Action) Lottery Funding, September 20, 2013

<http://www.ous.edu/files/state_board/meeting/dockets/ddoc130920-fa2.pdf>

⁵ Ibid.

⁶ Oregon State Board of Higher Education Docket for November 3, 2006, Pages 11-12

<http://www.ous.edu/files/state_board/meeting/dockets/ddoc061103.pdf>

HIGHER EDUCATION COORDINATING COMMISSION

June 11, 2015

dollar cap for this program. Funding has ranged from a high of \$12.2 million in the 2007-09 biennium to a low of \$8.4 million in the 2011-13 biennium⁷.

Legislative Action During the 2013-15 Biennium:

A budget note on 2013's HB 5031 (OUS's primary budget bill for that session) stated that the legislature implemented a "policy decision to cap the Sports Action Lottery distribution to OUS at \$8 million for the 2013-15 biennium, with the University of Oregon and Oregon State University limited to receiving \$1 million each with \$880,000 being dedicated to athletics and \$120,000 to scholarships. The remaining \$6 million is to be distributed by the State Board of Higher Education to the other five institutions."⁸

New State Board of Higher Education Allocation Formula in Response to These Legislative Actions:

As noted above, sections 2a and 2b of ORS 461.543 state as follows:

(2) The Board shall allocate moneys in the Sports Lottery Account among the public universities, giving due consideration to:

(a) The athletic conference to which the public university belongs and the relative costs of competing in that conference.

(b) The level of effort being made by the public university to generate funds and support from private sources.

The State Board of Higher Education chose to focus its new allocation formula primarily on the level at which institutions compete, as outlined in section 2(a) as the two institutions with the highest capacity to self-finance through earned income and philanthropic support were capped by the legislature. As a result, it placed the remaining five institutions into three major categories based on the level at which they compete:

NCAA Division I Football Championship Subdivision (FCS) Schools: Portland State University.

NCAA Division II Schools: Western Oregon University

NAIA Schools: Eastern Oregon University, Oregon Institute of Technology, Southern Oregon University.

Once it established these categories, the State Board of Higher Education adopted a new allocation formula at its October 4, 2013 meeting⁹. The new allocation formula split the remaining \$6 million in funds at the same proportions as had been in place for each institution in the prior funding formula:

⁷ OUS Chancellor's Office Budget Brief: Sports (Action) Lottery Funding, September 20, 2013
<http://www.ous.edu/files/state_board/meeting/dockets/ddoc130920-fa2.pdf>

⁸ 2013 HB 5031 Budget Report, Page 5

<<https://olis.leg.state.or.us/liz/2013R1/Downloads/MeasureAnalysisDocument/22171>>

⁹ State Board of Higher Education Docket Items, October 4, 2013, Pages 31-34

<http://www.ous.edu/files/state_board/meeting/dockets/ddoc131004.pdf>

HIGHER EDUCATION COORDINATING COMMISSION

June 11, 2015

Portland State University-37% of available funds-\$2,452,000 total, \$2,157,760 for athletics, \$294,240 for scholarships.

Western Oregon University-19% of available funds-\$1,004,000 total, \$883,520 for athletics, \$120,480 for scholarships

Eastern Oregon University, Oregon Institute of Technology and Southern Oregon University-15% of available funds to each-\$848,000 to each institution in total, \$746,240 for athletics, \$101,760 for scholarships.

Discussion with the Public Universities and Agreement on the Sports Action Lottery Going Forward:

With the HECC assuming allocation authority over the Sports Action Lottery funding allocation with the 2015-17 biennium, staff has engaged in discussions with the Vice Presidents of Finance and Administration to determine how the allocation formula should be constructed. The universities have collectively agreed that funding for the upcoming biennium should remain in line with the budget note developed by the legislature for the 2013-15 biennium and the previous OSBHE policy (including the \$1 million cap for the University of Oregon and Oregon State University) for the first \$8 million in funding in any biennium, inflation adjusted in 2015 dollars. For any amount in excess of \$8 million and below the cap of approximately \$18.6 million (adjusted for inflation through the end of 2014), the University of Oregon and Oregon State University will each receive 14.72% of that amount and the remaining institutions will each receive 14.11% of additional funding.

Draft Recommendation:

HECC Staff, in consultation with our university partners, has proposed an emergency OAR (713-013-XXXX). This OAR, as outlined below and provided as appendix A, sets forward two funding tiers:

- Tier 1 – The initial \$8 million allocation maintains the same structure as the 2013-15 allocation formula adopted by the SBHE.
- Tier 2 – Allocations approved by the Legislative Assembly beyond \$8 million and below the approximately \$18.6 million cap will be allocated as follows; OSU and UO will receive 14.72% of the increased funding, all other institutions will receive 14.11% of the increased funds.

These amounts are all based on 2015 dollars and will adjust annually based on Inflation. All institutions are required to report annually to the HECC on their expenditure of these funds in order to ensure compliance with the standards set out in ORS 461.543(1).

It is believed that this proposal fairly balances the relevant needs of each institution and provides appropriate funding levels commiserate with the costs each institution faces as they compete at their various levels. It is worth noting that this proposal continues a trend of granting a larger share of funds to institutions other than OSU and UO and has the support of all seven institutions. This is a well-reasoned approach because, as OSU and UO's ability to fundraise for athletics has risen, including significant new resources made available through the PAC-12's new TV deals, their need for direct investment by the state has arguably decreased. At the same time, the other five institutions lack a similar external revenue source.

HIGHER EDUCATION COORDINATING COMMISSION

June 11, 2015

The below table summarizes the allocation formula detailed in OAR 715-013-XXXX:

Institution	Category	At or Below \$8M	Above \$8M and below cap set in ORS 461.543(5)
Oregon State University	Division I FBS	12.5%	14.72%
University of Oregon	Division I FBS	12.5%	14.72%
Portland State University	Division I FCS	30.65%	14.11%
Western Oregon University	Division II	12.55%	14.11%
Eastern Oregon University	NAIA	10.6%	14.11%
Oregon Institute of Technology	NAIA	10.6%	14.11%
Southern Oregon University	NAIA	10.6%	14.11%

Staff Recommendation:

No action is required at this time.

Appendix I: Proposed Temporary OAR 715-013-XXXX:

HIGHER EDUCATION COORDINATING COMMISSION

DIVISION 13

UNIVERSITY PROGRAMS AND FINANCE

715-013-XXXX

1. Definitions
 - a. The “Higher Education Coordinating Commission” or “HECC” is the body established by ORS 351.715 and appointed by the Governor.
 - b. “Inflation” is defined as the previous full year CPI-U for the Portland, Oregon area as determined and defined by the US Bureau of Labor Statistics.
 - c. “Intercollegiate Athletic Fund” is defined by ORS 461.535 to consist of revenues credited to the Sports Lottery Account for distribution to public universities.
 - d. A “Public University” is any institution as defined in ORS 352.002, including; Eastern Oregon University (EOU), Oregon Institute of Technology (OIT), Oregon State University (OSU), Portland State University (PSU), Southern Oregon University (SOU), University of Oregon (UO) and Western Oregon University (WOU).
 - e. “Sports Lottery Account” is defined by ORS 461.543 as a fund under the control of the HECC consisting of lottery revenues.
2. All specific dollar amounts listed in the following sections are in 2015 dollars and will be adjusted for Inflation annually.
3. Funds are allocated to public universities through the Intercollegiate Athletic Fund and are to be spent for the purposes outlined in ORS 461.543.
4. Allocations in the first year of any biennium shall be 49% of total expenditure limitation established for the Sports Lottery Account. The remainder shall be allocated in the second year of the biennium.
5. Allocations shall be made by the HECC from the Intercollegiate Athletic Fund to public universities on a regular basis utilizing the following formula:

HIGHER EDUCATION COORDINATING COMMISSION

June 11, 2015

- a. The first \$8 million of biennial expenditure limitation established for the Sports Lottery Account in any biennium shall be allocated as follows.
 - i. Oregon State University and the University of Oregon shall each receive 12.5% of the total amount appropriated, to a cap of \$1 million per institution.
 - ii. Eastern Oregon University, Oregon Institute of Technology and Southern Oregon University shall each receive 10.6% of the total amount appropriated.
 - iii. Western Oregon University shall receive 12.55% of the total amount appropriated.
 - iv. Portland State University shall receive 30.65% of the total amount appropriated.
 - b. Amounts of biennial expenditure limitation beyond \$8 million and up to the cap set in ORS 461.543(5) established for the Sports Lottery Account in any biennium shall be allocated as follows.
 - i. Oregon State University and the University of Oregon shall each receive 14.72% of the additional appropriations.
 - ii. Eastern Oregon University, Oregon Institute of Technology, Portland State University, Southern Oregon University and Western Oregon University shall each receive 14.11% of the additional appropriations.
 - c. Amounts of biennial expenditure limitation beyond the cap set in ORS 461.543(5) established for the Sports Lottery Account in any biennium shall be allocated to the Office of Student Access and Completion for the Oregon Opportunity Grant program.
6. All institutions receiving funds via the Sports Lottery Account are required to submit a report annually to the HECC certifying compliance with guidelines set forth in ORS 461.543(1) on utilization of said funds.
 7. The HECC will give deference to any legislative designation of specific resources or policy decisions when making determinations on allocation of funds.
 8. OAR 715-013-XXXX is effective August 15, 2015.

Appendix II: ORS 461.543 (Sports Lottery Account):

(1) Except as otherwise specified in subsection (5) of this section, the Sports Lottery Account is continuously appropriated to and shall be used by the Higher Education Coordinating Commission to fund sports programs at public universities listed in ORS 352.002 (Public universities). Seventy percent of the revenues in the fund shall be used to fund nonrevenue producing sports and 30 percent shall be used for revenue producing sports. Of the total amount available in the fund, at least 50 percent shall be made available for women's athletics.

(2) The board shall allocate moneys in the Sports Lottery Account among the public universities, giving due consideration to:

(a) The athletic conference to which the public university belongs and the relative costs of competing in that conference.

(b) The level of effort being made by the public university to generate funds and support from private sources.

(3) As used in subsections (1) to (3) of this section, revenue producing sport is a sport that produces net revenue over expenditures during a calendar year or if its season extends into two calendar years, produces net revenue over expenditures during the season.

(4) An amount equal to one percent of the moneys transferred to the Administrative Services Economic Development Fund from the State Lottery Fund shall be allocated from the Administrative Services Economic Development Fund to the Sports Lottery Account.

(5) The amounts received by the Sports Lottery Account shall be allocated as follows:

(a) Eighty-eight percent for the purposes specified in subsections (1) to (3) of this section, but not to exceed \$8 million annually, adjusted annually pursuant to the Consumer Price Index, as defined in ORS 327.006 (Definitions for State School Fund distributions).

(b) Twelve percent for the purpose of scholarships, to be distributed equally between scholarships based on academic merit and scholarships based on need, as determined by rule of the board, but not to exceed \$1,090,909 annually.

(c) All additional money to the Oregon Student Access Commission for the Oregon Opportunity Grant program under ORS 348.260 (Oregon Opportunity Grant).

Appendix III: ORS 461.535 (Intercollegiate Athletic Fund):

The Intercollegiate Athletic Fund is created separate and distinct from the General Fund. The fund shall consist of revenues credited to the Sports Lottery Account under ORS 461.543 (Sports Lottery Account) (4) and any other revenues available to the fund.