

Docket Item:

August 2018 Legislative Update

Summary:Legislative Concept Details

Continuing until the commission approves the 2019 legislative package near the end of 2018, legislative concepts will be previewed for the Commission. Last meeting, concepts on eTranscripts, accelerated learning, and race conscious private scholarships were previewed. This summary provides information on modifications to the Oregon Promise Program, increased support for the Oregon Youth Conservation Corps, and restrictions on implied authority.

Modifications to the Oregon Promise Program

This concept proposes to make two changes to the Oregon Promise program to make the program friendlier to students and easier to administer.

First, the concept proposes to index, to an inflationary measure selected by HECC, the \$1000 minimum award. This change will avoid the devaluation of the minimum award over time.

Because the Oregon Promise program is a last-dollar program, some students, particularly those with the lowest expected family contribution levels, would not receive any benefit from the program if there was not a minimum award. In many cases, the minimum award allows students to afford costs related to attendance that they would not otherwise be able to afford. This change ensures the integrity of the minimum award over time by allowing it to grow in relation to a selected price index.

The second change proposes to eliminate the \$50 co-pay.

At the inception of the promise program, several parties were interested in the idea that students have 'skin-in-the-game.' That is, that they be responsible for a small portion of tuition costs. However, because cost of attendance comprises more than just tuition, students experience expenses even in the case that the Promise covers all tuition costs. Additionally, because the Oregon Promise award is, at maximum, the average of community college tuition in the state, a fair portion of students even shoulder some tuition cost. Finally, colleges have reported that the co-pay is burdensome to administer.

Support for the Oregon Youth Conservation Corps

The Oregon Legislature created the Oregon Youth Conservation Corps (OYCC) in 1987. OYCC grants funds to local youth corps providers across Oregon that hire and education Oregon youth utilizing hands-on experiential learning. For many youth, it is their first opportunity to work, earn a wage, and learn critical "soft" and hard skills through career and technical Education training. OYCC serves approximately 1,000 youth annually.

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OYCC is funded through a portion of the proceeds raised by the Amusement Device Tax (ADT), which is a per machine excise tax charged the owners of establishments that host video gaming machines from the Oregon Lottery. Oregon Lottery reports that the market for these machines is saturated, and thus the revenue raised by the tax is unlikely to increase. The tax rate is currently set at \$125 per machine, with increases of \$50 and \$75 if a particular machine meets specific revenue thresholds. OYCC receives approximately 57% of this revenue, with the remainder being roughly split between counties and the general fund. Each machine is also subject to an additional \$10 tax, and 100% of this revenue flows to OYCC. The legislative concept proposes to increase the ADT, which has not been increased since 1993.

In 2017, only 53% of youth that applied for an OYCC position were allowed to participate in the program, and in order to reach a full service level, OYCC requires an additional \$1.2m per biennium to operate.

Restrictions on Implied Authority

ORS 350.075(10), states: “The Higher Education Coordinating Commission may exercise only powers, duties and functions expressly granted by the Legislative Assembly. Except as otherwise expressly provided by law, all other authorities reside at the institutional level with the respective boards of the post-secondary institutions.” Part of the intent of the statute, derived from negotiations involving institutions at the time the HECC was created, is to limit or eliminate the ability of the HECC to assume authority not expressly provided to it involving institutional operational and academic prerogatives and affairs.

However, the statute as constructed is overbroad for its purpose. In an imagined environment where the Legislative Assembly enumerated all powers, duties, and functions at all times to all public entities, the current statutory language would not cause an undue burden, but this is not how statutory construction and legislating occurs generally, and certainly not how it occurs in Oregon.

Generally, wherever it is the case that statute specifies the “what,” and not the “how,” absent agency authority for rulemaking, the HECC can run into conflict with the implied authority restriction. In the case of standard business operations, statute may not even specify the “what.” As it currently stands, HECC is the only agency in state government that lacks “implied authorities.”

HECC staff is working with institutions to come up with modified language that ensures HECC has implied authorities where necessary to execute those duties explicitly delegated to it by the legislature.

Staff Recommendation:

This is an informational item and no action is required.