

A-Engrossed
House Bill 2382

Ordered by the House April 14
Including House Amendments dated April 14

Sponsored by Representative NELSON

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires annual audit or review of accounts and fiscal affairs of municipal corporations. Sets conditions for conduct of audit or review.

A BILL FOR AN ACT

1
2 Relating to financial affairs of municipal corporations; creating new provisions; and amending ORS
3 294.155, 294.665, 297.425, 297.435, 297.445, 297.455, 297.459, 297.465, 297.466, 297.475, 297.485,
4 297.495, 297.530, 297.670, 297.990, 545.225, 656.407 and 731.036.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1.** ORS 297.425 is amended to read:

7 297.425. (1) [*Except as provided in*] **Subject to** ORS 297.435, the accounts and fiscal affairs of
8 every municipal corporation shall be audited [*and*] **or** reviewed at least once each calendar or fiscal
9 year, and more often if considered advisable by the governing body or managing or executive officer
10 of the municipal corporation. The audits [*and*] **or** reviews shall be made by accountants pursuant
11 to contracts entered into by the governing body, or managing or executive officer, and accountants,
12 or by the Secretary of State pursuant to a duly adopted ordinance or resolution, a copy of which
13 shall be furnished to the Secretary of State.

14 (2) Municipal corporations may enter into contracts, or by ordinance or resolution request the
15 Secretary of State, to develop or revise and install accounting systems.

16 (3) All contracts for conducting audits [*and*] **or** reviews or for developing or revising and in-
17 stallling accounting systems shall be in a form prescribed or approved by the Secretary of State. A
18 **municipal corporation shall furnish a** copy of each completed contract [*shall be furnished*] **to** the
19 Secretary of State.

20 (4)(a) The compensation for audits [*and*] **or** reviews performed by accountants shall be as agreed
21 upon between the governing body, or managing or executive officer of the municipal corporation,
22 and the accountant, and shall be paid in the same manner as other claims against the municipal
23 corporation are paid.

24 (b) The compensation for installation of accounting systems performed by parties under sub-
25 section (2) of this section, other than the Secretary of State, shall be as agreed upon between the
26 governing body, or managing or executive officer of the municipal corporation, and the other party,
27 and shall be paid in the same manner as other claims against the municipal corporation are paid.

28 (5) All expenses and costs incurred by the Secretary of State in conducting audits [*and*] **or**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 reviews[, *and*] **or** installing accounting systems for municipal corporations shall be borne by the
 2 municipal corporation for which a particular audit, review or installation is made. The expenses and
 3 costs shall be paid to the Secretary of State in the same manner as other claims against the mu-
 4 nicipal corporation are paid.

5 (6) Audits [*and*] **or** reviews required by this section shall inquire into:

6 (a) The principles of accounting and methods followed by the municipal corporation in recording,
 7 summarizing and reporting its financial transactions and financial condition;

8 (b) The accuracy and legality of the transactions, accounts, records, files and financial reports
 9 of the officers and employees of the municipal corporation as they relate to its fiscal affairs; and

10 (c) Compliance with requirements, orders and regulations of other public officials which pertain
 11 to the financial condition or financial operations of the municipal corporation.

12 **SECTION 2.** ORS 297.435 is amended to read:

13 297.435. (1) Subject to ORS 297.445, [*the provisions of*] ORS 297.425 [*shall*] **does** not apply to any
 14 municipal corporation[, *except a county or a school district,*] if, with respect to any one calendar year
 15 or fiscal year, the municipal corporation meets [*all the conditions in either subsection (2) or (3) of this*
 16 *section.*] **the following conditions:**

17 [(2)](a) [*Total receipts from all sources and expenditures for all purposes, including money*] **Total**
 18 **expenditures for all purposes, including money** obtained from borrowing and money expended for
 19 debt retirement, did not exceed \$150,000 for the year;

20 (b) The municipal corporation has submitted financial statements for the year to the Secretary
 21 of State within 90 days following the end of the year; and

22 (c) A certificate has been submitted with the financial statements stating that the principal re-
 23 sponsible official of the municipal corporation was covered during the entire year by a fidelity or
 24 faithful performance bond in an amount at least equal to the total amount of money received by the
 25 municipal corporation during the year.

26 [(3)] (2) **The accounts and fiscal affairs of a municipal corporation shall be reviewed under**
 27 **ORS 297.425 if, with respect to any one calendar year or fiscal year, the municipal corpo-**
 28 **ration meets the following conditions:**

29 (a) [*Total receipts from all sources and expenditures for all purposes, including money obtained*]
 30 **Total expenditures for all purposes, including money obtained** from borrowing and money ex-
 31 pended for debt retirement, exceeded \$150,000 but did not exceed \$500,000 for the year;

32 (b) The municipal corporation has submitted financial statements for the year to the Secretary
 33 of State within 180 days following the end of the year, and the financial statements have been re-
 34 viewed by an accountant or the Secretary of State in accordance with standards prescribed by the
 35 Secretary of State; and

36 (c) A certificate has been submitted with the financial statements stating that the official re-
 37 sponsible for receiving and disbursing moneys on behalf of the municipal corporation was covered
 38 during the entire year by a fidelity or faithful performance bond in an amount at least equal to 10
 39 percent of the total receipts for the year, but not less than \$10,000.

40 (3) **The accounts and fiscal affairs of a municipal corporation shall be audited under ORS**
 41 **297.425 if, with respect to any one calendar year or fiscal year, the total expenditures for the**
 42 **municipal corporation for all purposes, including money expended for debt retirement, exceed**
 43 **\$500,000 for the year.**

44 (4) **Notwithstanding subsections (1) to (3) of this section, the accounts and fiscal affairs**
 45 **of a municipal corporation that is a county or a school district shall be audited under ORS**

297.425.

[(4)] (5) The financial statements required by this section shall be in a form prescribed by the Secretary of State and shall be considered audit reports for the purpose of the filing fee required by ORS 297.485.

[(5)] (6) The provisions of ORS 297.466 apply to financial statements for cities reviewed under subsection [(3)] (2) of this section.

SECTION 3. Section 4 of this 2005 Act is added to and made a part of ORS 297.405 to 297.740.

SECTION 4. For purposes of ORS 297.405 to 297.740 and 297.990, the Secretary of State by rule shall define the terms “audit” and “review.” In adopting the rule, the secretary shall consider the definitions given those terms in generally accepted auditing standards adopted by recognized authoritative bodies such as the American Institute of Certified Public Accountants or its successor.

SECTION 5. ORS 297.445 is amended to read:

297.445. (1) ORS 297.435 [does] (1) and (2) do not apply to a municipal corporation for any calendar or fiscal year if a petition requesting an audit, signed by residents of the municipal corporation who are subject to taxes, fees, assessments or other charges levied by the municipal corporation, is filed with the Secretary of State within six months of the end of the fiscal year for which the audit is requested. In a municipal corporation with a population of 150 or less, the petition must be signed by at least 10 residents. In a municipal corporation with a population of more than 150, the petition must be signed by at least 30 residents.

(2) The Secretary of State shall give notice of the petition to the governing body of the municipal corporation within 10 days of its receipt. Upon receipt of notice of the petition from the Secretary of State, the governing body or managing or executive officer of the municipal corporation shall immediately comply with the **audit** provisions of ORS 297.425. If a copy of a signed contract between the governing body or managing or executive officer and an accountant, or a duly authorized ordinance or resolution requesting an audit by the Secretary of State, is not received within 30 days of the dispatch of notice of petition, the Secretary of State shall cause an audit [and review] to be made of the accounts and fiscal affairs of the municipal corporation designated in the petition.

(3) The costs incurred by the Secretary of State in making the audit [and review] shall be borne by the municipal corporation, and shall be paid to the Secretary of State in the same manner as other claims against the municipal corporation.

SECTION 6. ORS 297.455 is amended to read:

297.455. If the accounts and fiscal affairs of a municipal corporation are audited [and] **or** reviewed for a calendar or fiscal year, in accordance with the requirements of ORS 297.465, by auditors provided by the federal government, the Secretary of State may accept for review and filing the audit **or review** reports of [such] **the** federal auditors if the reports also comply with the requirements set forth in ORS 297.465. Any [such audit] reports filed with the Secretary of State shall be subject to the filing fee required by ORS 297.485. If the audits [and] **or** reviews and resulting [audit] reports are found by the Secretary of State to comply with ORS 297.465, the municipal corporation will be considered in compliance with ORS 297.425.

SECTION 7. ORS 297.459 is amended to read:

297.459. An accountant who furnishes an audit **or review** report to a county pursuant to ORS 297.465 shall, at the same time, furnish a copy of the [audit] report to the Department of Revenue.

1 **SECTION 8.** ORS 297.465 is amended to read:

2 297.465. (1) The Secretary of State, in cooperation with the Oregon Board of Accountancy, and
 3 in consultation with the Oregon Society of Certified Public Accountants, shall prescribe the mini-
 4 mum standards for conducting audits **and reviews** of municipal corporations, preparing the resulting
 5 audit **or review** reports and expressing opinions upon the financial condition and results of opera-
 6 tion for the period under audit **or review**. The expression of opinion shall be signed by the ac-
 7 countant signing the contract, or in the case of a partnership or professional corporation, by a
 8 partner or stockholder who is an accountant as defined in ORS 297.405, who has personally con-
 9 ducted the audit **or review** to an extent satisfactory to the Secretary of State and to the municipal
 10 corporation.

11 (2) The municipal corporation shall be furnished with a written audit **or review** report, con-
 12 taining a signed expression of opinion, in the form prescribed by the Secretary of State. A copy of
 13 the audit **or review** report shall be furnished to each person who was a member of the governing
 14 body at the end of the calendar or fiscal year and to each member of the current governing body.
 15 Other copies shall be furnished the municipal corporation as are requested by the chairperson of the
 16 governing body or the managing or executive officer. The accountant shall furnish the [*audit*] report
 17 to the municipal corporation within six months after the close of the calendar or fiscal year under
 18 audit **or review**, except that the Secretary of State, for good cause shown, may grant to the ac-
 19 countant a reasonable extension of time.

20 (3) The municipal corporation shall file one copy of its audit **or review** report with the Secre-
 21 tary of State. The report shall be subject to review by the Secretary of State, who may also require
 22 submission of the working papers and audit **or review** programs of the accountant. If an audit, **re-**
 23 **view**, audit **or review** report or expression of opinion is found by the Secretary of State not to be
 24 in accordance with the prescribed standards, the Secretary of State shall request compliance. If the
 25 accountant fails to comply with the request, the Secretary of State shall so report to the Oregon
 26 Board of Accountancy, which thereupon may remove or suspend the name of the accountant from
 27 the roster required by ORS 297.670.

28 (4) Audit **or review** reports or financial statements filed with the Secretary of State as required
 29 by ORS 297.405 to 297.555 shall include the names, mailing addresses and titles of the officers and
 30 members of the governing board of the municipal corporation. The report or statement of a special
 31 district shall include the name of its registered agent and the address of its registered office as
 32 provided by ORS 198.335 to 198.365.

33 **SECTION 9.** ORS 297.466 is amended to read:

34 297.466. (1) In performing an audit [*and*] **or review** required under ORS 297.425, the accountant
 35 under contract with the municipal corporation or the Secretary of State, whoever performs the audit
 36 [*and*] **or review**, shall determine if the municipal corporation has, or has not, followed generally
 37 accepted governmental accounting principles in reporting its financial condition and operations, es-
 38 tablished appropriate accounting systems and internal controls and substantially complied with legal
 39 requirements in conducting its financial affairs. The determination shall either be included in the
 40 signed expression of opinion or otherwise disclosed in the audit **or review** report required under
 41 ORS 297.465.

42 (2) Upon receipt of an audit **or review** report under ORS 297.465 the governing body of a county
 43 or city shall determine the measures it considers necessary to correct any deficiencies disclosed in
 44 the report. The governing body shall adopt a resolution setting forth the corrective measures it
 45 proposes and the period of time estimated to complete them.

1 (3) Within 30 days after a county or city files a copy of its audit **or review** report with the
 2 Secretary of State under ORS 297.465 a copy of the resolution prepared under subsection (2) of this
 3 section shall also be filed. Upon receipt of the audit **or review** report and the resolution, the Sec-
 4 retary of State shall either acknowledge the [*city*] **city's** or county's plans to correct deficiencies
 5 cited in the [*audit*] report or notify the county or city of those deficiencies which, if not corrected,
 6 could result in withholding of funds under this section. At the request of the governing body of the
 7 city or county the Secretary of State shall make suggestions for correcting those deficiencies. If the
 8 governing body of the county or city does not agree with the notification by the Secretary of State,
 9 [*it*] **the governing body** shall be granted an opportunity for a conference regarding the notification,
 10 audit **or review** determinations or corrective measures to be taken.

11 (4) If the Secretary of State concurs with determinations made under subsection (1) of this sec-
 12 tion in two successive audits [*and*] **or** reviews of the same county or city, and determines that the
 13 governing body of the county or city has not taken adequate action to correct the deficiencies cited
 14 in the notifications given under subsection (3) of this section, the Secretary of State may certify
 15 these facts to the State Treasurer, the Director of the Department of Revenue, the Director of
 16 Transportation and the Director of the Oregon Department of Administrative Services. The certif-
 17 icate of the Secretary of State [*shall*] **may** only be issued after notice, opportunity to be heard and
 18 hearing pursuant to the provisions of ORS chapter 183, governing contested cases. The hearing shall
 19 be held within the jurisdiction of the county or city.

20 (5) Upon receipt of a certificate from the Secretary of State under subsection (4) of this section,
 21 the State Treasurer, the Director of the Department of Revenue, the Director of Transportation and
 22 the Director of the Oregon Department of Administrative Services shall withhold from distribution
 23 to the county or city 10 percent of the moneys otherwise to be distributed to it under ORS 221.770,
 24 323.455, 366.762 to 366.768, 366.785 to 366.820, 471.805 and 471.810. The moneys withheld shall be
 25 disbursed to the county or city only after the officer responsible for disbursement has received no-
 26 tice from the Secretary of State that the governing body of the county or city has taken action to
 27 follow generally accepted governmental accounting principles in reporting financial condition and
 28 operations and establish appropriate accounting systems and internal controls and will substantially
 29 comply with legal requirements in conducting its financial affairs.

30 (6) The Secretary of State [*shall*] **may** not issue a certificate under subsection (4) of this section
 31 for failure to follow generally accepted governmental accounting principles if a county or city has
 32 followed accounting practices authorized by state law.

33 (7) As used in this section, "generally accepted governmental accounting principles" means
 34 those accounting principles sanctioned by recognized authoritative bodies such as the National
 35 Council on Governmental Accounting, the American Institute of Certified Public Accountants, the
 36 Financial Accounting Standards Board or their successors.

37 **SECTION 10.** ORS 297.475 is amended to read:

38 297.475. Whenever any municipal corporation has made a request to the Secretary of State,
 39 pursuant to ORS 297.425, for the audit **or review** of its accounts and fiscal affairs, or for the in-
 40 stallation of accounting systems, or both, the municipal corporation may cancel that request by or-
 41 dinance or resolution adopted and furnished to the Secretary of State at least 90 days prior to the
 42 end of a calendar or fiscal year.

43 **SECTION 11.** ORS 297.485 is amended to read:

44 297.485. (1) At the time an audit **or review** report, prepared by an accountant, is filed with the
 45 Secretary of State, as required by ORS 297.465, the municipal corporation shall pay to the Secretary

1 of State a filing fee. The filing fee shall be determined by the total expenditures made by the mu-
 2 nicipal corporation for any and all purposes during the calendar or fiscal year audited **or**
 3 **reviewed**, except that expenditures for principal of bonded debt, principal of short-term loans, prin-
 4 cipal of warrants redeemed which were issued during prior audit **or review** periods, transfers or
 5 loans between funds and turnovers of taxes or other trust moneys to other municipal corporations
 6 [shall] **may** not be included in the total expenditures upon which the amount of the fee is based.

7 (2) The filing fee to be paid shall be as indicated for those municipal corporations whose total
 8 expenditures fall within the classifications as follows:

	Over	Not Over	Fee
		\$ 50,000	\$ 20
\$ 50,000		150,000	40
150,000		500,000	150
500,000		1,000,000	200
1,000,000		5,000,000	250
5,000,000		10,000,000	300
10,000,000		50,000,000	350
50,000,000			400

21
 22 (3) Audit reports filed by the administrative office of the county, under ORS 328.465 (2), for
 23 school districts with less than 1,000 children according to the latest school census in the county,
 24 shall be considered one report for purposes of the filing fee required by this section. The filing fee
 25 shall be paid by the county administrative office and deducted pro rata from moneys due to the se-
 26 veral school districts.

27 **SECTION 12.** ORS 297.495 is amended to read:

28 297.495. Any extraordinary work required to be performed by the Secretary of State in con-
 29 nection with any of the audits, **reviews** or [the] reports thereon filed pursuant to ORS 297.465 shall
 30 be compensated by an additional payment to be agreed upon by the Secretary of State and the mu-
 31 nicipal corporation for which the audit **or review** is made or to be made.

32 **SECTION 13.** ORS 297.530 is amended to read:

33 297.530. (1) The Secretary of State may subpoena witnesses, require the production of accounts
 34 and do all things necessary to assure that the accounts and fiscal affairs of a municipal corporation
 35 are subject to a complete audit **or review**. If an accountant is denied access to any of the accounts
 36 or other information pertaining to the fiscal affairs of a municipal corporation, the accountant may
 37 request the Secretary of State to subpoena the accounts, or witnesses who may be able to furnish
 38 the necessary information. The accountant shall furnish to the Secretary of State such information
 39 as the Secretary of State determines necessary to carry out the provisions of [subsections (1) and]
 40 **this subsection and subsection** (2) of this section.

41 (2) If a person fails to comply with any subpoena issued under subsection (1) of this section, a
 42 judge of the circuit court of any county, on application of the Secretary of State, shall compel obe-
 43 dience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena
 44 issued from the circuit court.

45 (3) All costs necessarily incurred by the Secretary of State or an accountant in carrying out

1 subsections (1) and (2) of this section shall be paid by the municipal corporation.

2 **SECTION 14.** ORS 297.670 is amended to read:

3 297.670. The Oregon Board of Accountancy shall prepare and maintain a roster of accountants
4 authorized to conduct the municipal audits **or reviews** required by ORS 297.425.

5 **SECTION 15.** ORS 297.990 is amended to read:

6 297.990. (1) In addition to all other penalties, any county court, board of county commissioners
7 or managing or executive officers of any municipal corporation, who violate any of the provisions
8 of ORS 297.405 to 297.555 or fail to have the audits, **reviews or** [and] examinations required by
9 those sections made, [upon such violation or failure] shall forfeit to the county or other municipality
10 their salaries and fees due them from the county or other municipality; *and it shall be*].

11 **(2) If the violation or failure described in subsection (1) of this section occurs, it is un-**
12 **lawful for any officer of [such county or municipality] the municipal corporation to draw any**
13 **warrant in favor of the members of [such] a county court, [or such] county commissioners[,] or**
14 **managing or executive officers of [such] the municipal corporation, in payment of [such] the sala-**
15 **ries or fees due the members, commissioners or officers, or to pay the [same] salaries or fees**
16 **in any manner.**

17 **SECTION 16.** ORS 294.155 is amended to read:

18 294.155. (1) The custodial officer for a local government that holds and invests funds on behalf
19 of another government unit shall at least once a year submit an [audited] **audit** report to that gov-
20 ernment unit for which funds are invested. An audit report shall be submitted to the local govern-
21 mental unit or units within 30 days after receipt of the audit report by the custodial officer's
22 governing body. This subsection [shall] **does** not apply to municipal corporations or political subdivi-
23 sions exempt from municipal audits [in] **or reviews under** ORS 297.435.

24 (2) The custodial officer shall prepare a report not less than monthly to each county, munici-
25 pality, school district and other political subdivision the segregated funds of which the custodial
26 officer is then investing, as to changes made in the investments of the funds of that body during the
27 preceding month. If requested by that body, the custodial officer shall furnish to it details on the
28 investment transactions for its fund. The custodial officer shall also provide copies of any investment
29 policy which has been adopted to the custodial officer's governing body upon request.

30 **SECTION 17.** ORS 294.665 is amended to read:

31 294.665. The levying board of each municipal corporation under the jurisdiction of the **tax**
32 **supervising and conservation** commission shall annually submit a copy of the full report of its
33 [independent auditor] **accountants** under ORS 297.425, or a copy of the financial statements sub-
34 mitted to the Secretary of State under ORS 297.435, as soon as practicable after the close of each
35 fiscal year.

36 **SECTION 18.** ORS 545.225 is amended to read:

37 545.225. (1) The board of directors may:

38 (a) Enter into contracts and take conveyances or other assurances for all property acquired by
39 it under the Irrigation District Law, in the name of the irrigation district, to and for the purposes
40 expressed in the Irrigation District Law.

41 (b) Institute and maintain all actions and proceedings, suits at law or in equity necessary or
42 proper in order to fully carry out the Irrigation District Law, or to enforce, maintain, protect or
43 preserve rights, privileges and immunities created by the Irrigation District Law, or acquired in
44 pursuance of the Irrigation District Law.

45 (2) In all courts, acts, suits or proceedings the board may sue, appear and defend in person or

1 by attorneys, in the name of the irrigation district. The court shall in all actions, suits or other
 2 proceedings take judicial knowledge of the organization and boundaries of all irrigation districts.

3 (3) When an audit **or review** is made in accordance with the provisions of ORS 297.405 to
 4 297.555, the auditors shall prepare and file with the Secretary of State a certified copy of the
 5 [*audit*] report.

6 **SECTION 19.** ORS 656.407 is amended to read:

7 656.407. (1) An employer shall establish proof with the Director of the Department of Consumer
 8 and Business Services that the employer is qualified either:

9 (a) As a carrier-insured employer by causing a guaranty contract issued by a guaranty contract
 10 insurer to be filed with the director; or

11 (b) As a self-insured employer by establishing proof that the employer has an adequate staff
 12 qualified to process claims promptly and has the financial ability to make certain the prompt pay-
 13 ment of all compensation and other payments that may become due to the director under this
 14 chapter.

15 (2) Except as provided in subsection (3) of this section, a self-insured employer shall establish
 16 proof of financial ability by providing security that the director determines acceptable by rule. The
 17 security must be in an amount reasonably sufficient to insure payment of compensation and other
 18 payments that may become due to the director but not less than the employer's normal expected
 19 annual claim liabilities and in no event less than \$100,000. In arriving at the amount of security
 20 required under this subsection, the director may take into consideration the financial ability of the
 21 employer to pay compensation and other payments and probable continuity of operation. The secu-
 22 rity shall be held by the director to secure the payment of compensation for injuries to subject
 23 workers of the employer and to secure other payments that may become due from the employer to
 24 the director under this chapter. Moneys received as security under this subsection shall be deposited
 25 with the State Treasurer in an account separate and distinct from the General Fund. Interest earned
 26 by the account shall be credited to the account. The amount of security may be increased or de-
 27 creased from time to time by the director.

28 (3)(a) A city or county that wishes to be exempt from subsection (2) of this section may make
 29 written application therefor to the director. The application shall include a copy of the city's or
 30 county's most recent annual audit **or review report** as filed with the Secretary of State under ORS
 31 297.405 to 297.740, information regarding the establishment of a loss reserve account for the pay-
 32 ment of compensation to injured workers and such other information as the director may require.
 33 The director shall approve the application and the city or county shall be exempt from subsection
 34 (2) of this section if the director finds that:

35 (A) The city or county has been a self-insured employer in compliance with subsection (2) of this
 36 section for more than three consecutive years prior to making the application referred to in this
 37 subsection as an independently self-insured employer and not as part of a self-insured group.

38 (B) The city or county has in effect a loss reserve account:

39 (i) That is actuarially sound and that is adequately funded as determined by an annual audit
 40 **or review** under ORS 297.405 to 297.740 to pay all compensation to injured workers and amounts
 41 due the director pursuant to this chapter. A copy of the annual audit **or review report** shall be filed
 42 with the director. Upon a finding that there is probable cause to believe that the loss reserve ac-
 43 count is not actuarially sound, the director may require a city or county to obtain an independent
 44 actuarial audit of the loss reserve account. The requirements of this subsection are in addition to
 45 and not in lieu of any other audit or reporting requirement otherwise prescribed by or pursuant to

1 law.

2 (ii) That is dedicated to and may be expended only for the payment of compensation and
3 amounts due the director by the city or county under this chapter.

4 (b) The director shall have the first lien and priority right to the full amount of the loss reserve
5 account required to pay the present discounted value of all present and future claims under this
6 chapter.

7 (c) The city or county shall notify the director no later than 60 days prior to any action to
8 discontinue the loss reserve account. The city or county shall advise the director of the city's or
9 county's plans to submit the security deposits required in subsection (2) of this section, or obtain
10 coverage as a carrier-insured employer prior to the date the loss reserve account ceases to exist.
11 If the city or county elects to discontinue self-insurance, it shall submit such security as the director
12 may require to insure payment of all compensation and amounts due the director for the period the
13 city or county was self-insured.

14 (d) In order to requalify as a self-insured employer, the city or county must deposit prior to
15 discontinuance of the loss reserve account such security as is required by the director pursuant to
16 subsection (2) of this section.

17 (e) Notwithstanding ORS 656.440, if prior to the date of discontinuance of the loss reserve ac-
18 count the director has not received the security deposits required in subsection (2) of this section,
19 the city's or county's certificate of self-insurance is automatically revoked as of that date.

20 **SECTION 20.** ORS 731.036 is amended to read:

21 731.036. The Insurance Code does not apply to any of the following to the extent of the subject
22 matter of the exemption:

23 (1) A bail bondsman, other than a corporate surety and its agents.

24 (2) A fraternal benefit society that has maintained lodges in this state and other states for 50
25 years prior to January 1, 1961, and for which a certificate of authority was not required on that
26 date.

27 (3) A religious organization providing insurance benefits only to its employees, which organiza-
28 tion is in existence and exempt from taxation under section 501(c)(3) of the federal Internal Revenue
29 Code on September 13, 1975.

30 (4) Public bodies, as defined in ORS 30.260, that either individually or jointly establish a self-
31 insurance fund for tort liability in accordance with ORS 30.282.

32 (5) Public bodies, as defined in ORS 30.260, that either individually or jointly establish a self-
33 insurance fund for property damage.

34 (6) Cities, counties, school districts, community college districts, community college service dis-
35 tricts or districts, as defined in ORS 198.010 and 198.180, that either individually or jointly insure
36 for health insurance coverage, excluding disability insurance, their employees or retired employees,
37 or their dependents, or students engaged in school activities, or combination of employees and de-
38 pendents, with or without employee or student contributions, if all of the following conditions are
39 met:

40 (a) The individual or jointly self-insured program meets the following minimum requirements:

41 (A) In the case of a school district, community college district or community college service
42 district, the number of covered employees and retired employees aggregates at least 1,000 individ-
43 uals;

44 (B) In the case of an individual public body program other than a school district, community
45 college district or community college service district, the number of covered employees and retired

1 employees aggregates at least 500 individuals; and

2 (C) In the case of a joint program of two or more public bodies, the number of covered em-
3 ployees and retired employees aggregates at least 1,000 individuals, or the annual contributions to
4 the program aggregate at least \$500,000;

5 (b) The individual or jointly self-insured health insurance program includes all coverages and
6 benefits required of group health insurance policies under ORS chapter 743;

7 (c) The individual or jointly self-insured program must have program documents that define
8 program benefits and administration;

9 (d) Enrollees must be provided copies of summary plan descriptions including:

10 (A) Written general information about services provided, access to services, charges and sched-
11 uling applicable to each enrollee's coverage;

12 (B) The program's grievance and appeal process; and

13 (C) Other group health plan enrollee rights, disclosure or written procedure requirements es-
14 tablished under ORS chapter 743;

15 (e) The financial administration of an individual or jointly self-insured program must include the
16 following requirements:

17 (A) Program contributions and reserves must be held in separate accounts and used for the ex-
18 clusive benefit of the program;

19 (B) The program must maintain adequate reserves. Reserves may be invested in accordance with
20 the provisions of ORS chapter 293. Reserve adequacy must be annually calculated with proper
21 actuarial calculations including the following:

22 (i) Known claims, paid and outstanding;

23 (ii) A history of incurred but not reported claims;

24 (iii) Claims handling expenses;

25 (iv) Unearned contributions; and

26 (v) A claims trend factor; and

27 (C) The program must maintain adequate reinsurance against the risk of economic loss in ac-
28 cordance with the provisions of ORS 742.065 unless the program has received written approval for
29 an alternative arrangement for protection against economic loss from the Director of the Depart-
30 ment of Consumer and Business Services;

31 (f) The individual or jointly self-insured program must have sufficient personnel to service the
32 employee benefit program or must contract with a third party administrator licensed under ORS
33 chapter 744 as a third party administrator to provide such services;

34 (g) The individual or jointly self-insured program shall be subject to assessment in accordance
35 with ORS 735.614 and former enrollees shall be eligible for portability coverage in accordance with
36 ORS 735.616;

37 (h) The public body, or the program administrator in the case of a joint insurance program of
38 two or more public bodies, files with the Director of the Department of Consumer and Business
39 Services copies of all documents creating and governing the program, all forms used to communicate
40 the coverage to beneficiaries, the schedule of payments established to support the program and,
41 annually, a financial report showing the total incurred cost of the program for the preceding year.
42 A copy of the annual audit **or review** required by ORS 297.425 may be used to satisfy the financial
43 report filing requirement; and

44 (i) Each public body in a joint insurance program is liable only to its own employees and no
45 others for benefits under the program in the event, and to the extent, that no further funds, in-

1 cluding funds from insurance policies obtained by the pool, are available in the joint insurance pool.

2 (7) All ambulance services.

3 (8) A person providing either or both of the services described in this subsection in connection
4 with motor vehicles. The exemption under this subsection does not apply to an authorized insurer
5 providing such services under an insurance policy. This subsection applies to the following services:

6 (a) Towing service.

7 (b) Emergency road service, which means adjustment, repair or replacement of the equipment,
8 tires or mechanical parts of a motor vehicle in order to permit the motor vehicle to be operated
9 under its own power.

10 (9)(a) A person described in this subsection who, in an agreement to lease or to finance the
11 purchase of a motor vehicle, agrees to waive for no additional charge the amount specified in par-
12 agraph (b) of this subsection upon total loss of the motor vehicle because of physical damage, theft
13 or other occurrence, as specified in the agreement. The exemption established in this subsection
14 applies to the following persons:

15 (A) The seller of the motor vehicle, if the sale is made pursuant to a motor vehicle retail in-
16 stallment contract.

17 (B) The lessor of the motor vehicle.

18 (C) The lender who finances the purchase of the motor vehicle.

19 (D) The assignee of a person described in this paragraph.

20 (b) The amount waived pursuant to the agreement shall be the difference, or portion thereof,
21 between the amount received by the seller, lessor, lender or assignee, as applicable, which repres-
22 ents the actual cash value of the motor vehicle at the date of loss, and the amount owed under the
23 agreement.

24 **SECTION 21. The amendments to ORS 294.155, 294.665, 297.425, 297.435, 297.445, 297.455,**
25 **297.459, 297.465, 297.466, 297.475, 297.485, 297.495, 297.530, 297.670, 297.990, 545.225, 656.407 and**
26 **731.036 by sections 1, 2 and 5 to 20 of this 2005 Act apply to municipal audits or reviews**
27 **conducted for calendar or fiscal years that begin on or after the effective date of this 2005**
28 **Act.**

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