

House Bill 3216

Sponsored by Representative HUNT; Representatives ACKERMAN, AVAKIAN, BARNHART, BEYER, BUCKLEY, DINGFELDER, HOLVEY, MACPHERSON, MERKLEY, ROSENBAUM, SHIELDS, TOMEI

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 **as introduced**.

Creates General Fund Operating Reserve Fund. Requires revenues received for biennium that exceed by one percent or more amounts estimated to be received for biennium to be placed into reserve fund. Returns amounts in excess of stated percentage of prior biennium appropriations when reserve fund exceeds threshold level.

Takes effect only if House Joint Resolution 42 (2005) is approved by people at next regular general election.

A BILL FOR AN ACT

1
2 Relating to state finance; creating new provisions; amending ORS 291.349, 291.351, 293.701 and
3 305.792; and prescribing an effective date.

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

5 **SECTION 1. (1) The General Fund Operating Reserve Fund is established in the State**
6 **Treasury, separate and distinct from the General Fund. Moneys in the General Fund Oper-**
7 **ating Reserve Fund shall be invested as provided in ORS 293.701 to 293.820. Interest and other**
8 **earnings of the General Fund Operating Reserve Fund shall be credited to the reserve fund.**

9 **(2) The General Fund Operating Reserve Fund consists of moneys deposited in the re-**
10 **serve fund under ORS 291.349 and any earnings of the reserve fund.**

11 **(3) The Legislative Assembly may enact legislation to appropriate or transfer all or any**
12 **portion of the General Fund Operating Reserve Fund for general governmental purposes only**
13 **when an appropriation or transfer is permitted under section 14 (9), Article IX of the Oregon**
14 **Constitution.**

15 **SECTION 2. ORS 291.349 is amended to read:**

16 291.349. (1) As soon as practicable after adjournment sine die of the regular session of the
17 Legislative Assembly, the Oregon Department of Administrative Services shall report to the Emer-
18 gency Board the estimate as of July 1 of the first year of the biennium of General Fund and State
19 Lottery Fund revenues that will be received by the state during that biennium. The Oregon De-
20 partment of Administrative Services shall base its estimate on the last forecast given to the Legis-
21 lative Assembly before adjournment sine die of the regular session on which the printed, adopted
22 budget prepared in the Oregon Department of Administrative Services is based, adjusted only insofar
23 as necessary to reflect changes in laws adopted at that session. The report shall contain the esti-
24 mated revenues from corporate income and excise taxes separately from the estimated revenues from
25 other General Fund sources. The Oregon Department of Administrative Services may revise the es-
26 timate if necessary following adjournment sine die of any special or emergency session of the Leg-
27 islative Assembly but any revision does not affect the basis of the computation described in
28 subsection (3) or (4) of this section.

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 (2) As soon as practicable after the end of the biennium, the Oregon Department of Adminis-
 2 trative Services shall report to the Emergency Board, or the Legislative Assembly if it is in session,
 3 the amount of General Fund revenues *[collected]* **received** as of the last June 30 of the preceding
 4 biennium. The report shall contain the *[collections]* **amounts received** from corporate income and
 5 excise taxes separately from *[collections]* **the amounts received** from other sources.

6 (3) If the revenues received from the corporate income and excise taxes during the biennium
 7 exceed the amounts estimated to be received from such taxes *[for]* **during** the biennium, as estimated
 8 after adjournment sine die of the regular session, *[by two percent or more, the total amount of that*
 9 *excess shall be credited to corporate income and excise taxpayers in a percentage amount of corporate*
 10 *excise and income tax liability as determined under subsection (5) of this section. However, no credit*
 11 *shall be allowed against tax liability imposed by ORS 317.090.]* **the amount of revenues received**
 12 **that exceeds by one percent or more the amount estimated to be received shall be deposited**
 13 **in the General Fund Operating Reserve Fund established under section 1 of this 2005 Act.**

14 (4) If the revenues received from General Fund *[revenue]* sources, exclusive of those described
 15 in subsection (3) of this section, during the biennium exceed the amounts estimated to be received
 16 from such sources *[for]* **during** the biennium, as estimated after adjournment sine die of the regular
 17 session, *[by two percent or more, there shall be refunded from personal income tax revenues an amount*
 18 *equal to the total amount of that excess, reduced by the cost certified by the Department of Revenue*
 19 *under ORS 291.351 as being allocable to payments described under this subsection. The excess amount*
 20 *to be refunded shall be paid to personal income taxpayers in a percentage amount of prior year per-*
 21 *sonal income tax liability as determined under subsection (6) of this section.]* **the amount of revenues**
 22 **received that exceeds by one percent or more the amount estimated to be received shall be**
 23 **deposited in the General Fund Operating Reserve Fund established under section 1 of this**
 24 **2005 Act.**

25 (5)(a) **If the amount of the General Fund Operating Reserve Fund exceeds 11 percent of**
 26 **the amount appropriated from the General Fund for the biennium prior to the biennium in**
 27 **which the moneys are deposited in the reserve fund, the amount of the reserve fund that**
 28 **exceeds 10 percent of the amount appropriated from the General Fund for the prior biennium**
 29 **shall be returned to corporate income and excise taxpayers and personal income taxpayers**
 30 **as prescribed in section 14 (6), Article IX of the Oregon Constitution.**

31 (b) **If an amount is returned to corporate income and excise taxpayers under this sub-**
 32 **section, the amount that is returned shall be credited in a percentage amount of corporate**
 33 **excise and income tax liability as determined under subsection (6) of this section, except that**
 34 **credit may not be allowed against taxes imposed under ORS 317.090.**

35 (c) **If an amount is returned to personal income taxpayers under this subsection, the**
 36 **amount that is returned shall be refunded from personal income tax revenues. The amount**
 37 **to be refunded shall be equal to the amount to be returned to personal income taxpayers as**
 38 **prescribed in section 14 (6), Article IX of the Oregon Constitution, reduced by the cost cer-**
 39 **tified by the Department of Revenue under ORS 291.351 as being allocable to payments de-**
 40 **scribed under this paragraph. The amount to be refunded shall be paid to personal income**
 41 **taxpayers in a percentage amount of prior year personal income tax liability as determined**
 42 **under subsection (7) of this section.**

43 [(5)] (6)(a) **If there is an *[excess]* amount to be credited under subsection [(3)] (5)(b) of this**
 44 **section, on or before October 1, following the end of each biennium, the Oregon Department of Ad-**
 45 **ministrative Services shall determine and certify to the Department of Revenue the percentage**

1 amount of credit for purposes of subsection [(3)] **(5)(b)** of this section. The percentage amount de-
 2 termined shall be a percentage amount to the nearest one-tenth of [a] **one** percent that will dis-
 3 tribute the [excess] **amount** to be credited to corporate excise and income taxpayers for [taxable]
 4 **tax** years beginning in the calendar year during which the [excess] **amount** is determined. The
 5 credit shall be computed after the allowance of any other credit or offset against tax liability al-
 6 lowed or allowable under any provision of law of this state, and before the application of estimated
 7 tax payments, withholding or other advance tax payments.

8 **(b) An amount equal to the total amount to be credited under subsection (5)(b) of this**
 9 **section shall be transferred from the General Fund Operating Reserve Fund to the General**
 10 **Fund for the biennium in which the amount is being returned.**

11 [(6)(a)] **(7)(a)** If there is an [excess] **amount** to be refunded under subsection [(4)] **(5)(c)** of this
 12 section, on or before September 15, following the end of each biennium, the Oregon Department of
 13 Administrative Services shall determine and certify to the Department of Revenue the percentage
 14 amount of refund payment for purposes of subsection [(4)] **(5)(c)** of this section. The percentage
 15 amount so determined shall be a percentage amount to the nearest one-hundredth of [a] **one** percent
 16 that will distribute the [excess] **amount** to be refunded to personal income taxpayers under sub-
 17 section [(4)] **(5)(c)** of this section. The percentage amount shall equal the amount [distributed] **to**
 18 **be refunded** under subsection [(4)] **(5)(c)** of this section divided by the estimated total personal in-
 19 come tax liability for all personal income taxpayers for tax years beginning in the calendar year
 20 immediately preceding the calendar year in which the [excess] **amount to be refunded** is deter-
 21 mined.

22 (b) The Department of Revenue shall multiply the percentage amount determined under para-
 23 graph (a) of this subsection by the total amount of a personal income taxpayer's tax liability for the
 24 tax year beginning in the calendar year immediately preceding the calendar year in which the [ex-
 25 cess] **amount to be refunded** is determined in order to calculate the amount of the refund to be
 26 made to the taxpayer.

27 (c) The refund described under this subsection shall be subject to the rules allowing setoff of
 28 refunds or sums due debtors of this state under ORS 293.250.

29 (d) The refund described under this subsection shall be mailed by the Department of Revenue
 30 to personal income taxpayers eligible for the payment on or before December 1 following the end
 31 of the biennium for which the payment described under this subsection is being made.

32 (e) Notwithstanding paragraph (d) of this subsection, the Department of Revenue shall mail the
 33 refund at the earliest date of practicable convenience in the case of a return:

34 (A) For a tax year beginning in the calendar year immediately preceding the calendar year in
 35 which the [excess] **amount to be returned** is determined for which refund is being made; and

36 (B) That is first filed on or after August 15 after the end of the biennium.

37 [(7)] **(8)** [No refund shall be] **A refund may not be** made to a taxpayer if, after making the
 38 calculation described under subsection [(6)] **(7)** of this section, the amount calculated is less than
 39 \$1.

40 **SECTION 3.** ORS 291.351 is amended to read:

41 291.351. If, based on the report made under ORS 291.349 (2), refund will be made under ORS
 42 291.349 [(4)] **(5)(c)**, the Department of Revenue shall certify the costs that are incurred in calculat-
 43 ing and making the refunds under ORS 291.349 [(4)] **(5)(c)**. Costs shall be certified by the depart-
 44 ment within 15 days of the date the report under ORS 291.349 (2) is made. As used in this section,
 45 "costs" means and is limited to those costs that, absent the requirement of making a refund under

1 ORS 291.349 [(4)] (5)(c), would not be incurred by the department.

2 **SECTION 4.** ORS 305.792 is amended to read:

3 305.792. (1) The Department of Revenue shall cause a checkoff box to be printed on the personal
4 income and corporate income or excise tax returns for the appropriate tax year, by which a tax-
5 payer may indicate that a surplus refund payment or credit that the taxpayer may otherwise be
6 entitled to under ORS 291.349 shall instead be used for funding education.

7 (2)(a) A personal income taxpayer may elect to donate a surplus refund payment to be made
8 under ORS 291.349 to public elementary and secondary school education. The taxpayer may make
9 the election by checking the appropriate checkoff box on the taxpayer's return indicating the tax-
10 payer's intention to donate the surplus refund payment to public elementary and secondary educa-
11 tion.

12 (b) Once made, the election is irrevocable for any surplus refund payments received until a
13 subsequent return is filed for a later tax year, and on which the checkoff box is not checked.

14 (3)(a) A corporate excise or income taxpayer may elect to not claim a surplus refund credit that
15 the taxpayer would otherwise be entitled to pursuant to ORS 291.349, in order to achieve a corre-
16 sponding transfer of such moneys from the General Fund to the State School Fund for the support
17 of public elementary and secondary school education. The taxpayer may make the election by
18 checking the appropriate checkoff box on the taxpayer's return and by not using the surplus refund
19 credit percentage to reduce the taxpayer's tax liability.

20 (b) A taxpayer that checks the appropriate checkoff box indicating that the credit will not be
21 claimed but that nevertheless claims the credit in determining the taxpayer's tax liability shall be
22 considered to have not made the election under this subsection.

23 (c) The election to not claim a credit under this subsection may not be revoked by filing an
24 amended return.

25 (4) After the determination that surplus refund payments are to be made under ORS 291.349 [(4)
26 and (6)] (5)(c) and (7), the department shall determine the total amount of such payments for which
27 an election to donate to public elementary and secondary education has been made and shall certify
28 this amount to the State Treasurer. Following the department's certification to the State Treasurer,
29 an election to donate that biennium's surplus refund payments under subsection (2) of this section
30 is irrevocable.

31 (5) Following the determination to credit corporate income and excise taxes pursuant to ORS
32 291.349 [(3) and (5)] (5)(b) and (6), the department shall annually certify the total amount of allow-
33 able credits that have not been claimed pursuant to an election made under subsection (3) of this
34 section. The certification shall be made on or before December 31 of each year, until the tax year
35 for which the credit would otherwise be claimed becomes a closed tax year.

36 **SECTION 5. The amendments to ORS 291.349, 291.351 and 305.792 by sections 2 to 4 of this**
37 **2005 Act apply to biennia beginning on or after July 1, 2005.**

38 **SECTION 6.** ORS 293.701 is amended to read:

39 293.701. As used in ORS 293.701 to 293.820, unless the context requires otherwise:

40 (1) "Council" means the Oregon Investment Council.

41 (2) "Investment funds" means:

42 (a) Public Employees Retirement Fund referred to in ORS 238.660;

43 (b) Industrial Accident Fund referred to in ORS 656.632;

44 (c) Consumer and Business Services Fund referred to in ORS 705.145;

45 (d) Employment Department Special Administrative Fund referred to in ORS 657.822;

- 1 (e) Insurance Fund referred to in ORS 278.425;
- 2 (f) Funds under the control and administration of the Department of State Lands;
- 3 (g) Oregon Student Assistance Fund referred to in ORS 348.570;
- 4 (h) Moneys made available to the Commission for the Blind under ORS 346.270 and 346.540 or
- 5 rules adopted thereunder;
- 6 (i) Forest rehabilitation bonds sinking fund referred to in ORS 530.280;
- 7 (j) Oregon War Veterans' Fund referred to in ORS 407.495;
- 8 (k) Oregon War Veterans' Bond Sinking Account referred to in ORS 407.515;
- 9 (L) World War II Veterans' Compensation Fund;
- 10 (m) World War II Veterans' Bond Sinking Fund;
- 11 (n) Savings and loan association funds in the hands of the Director of the Department of Con-
- 12 sumer and Business Services;
- 13 (o) Funds in the hands of the State Treasurer that are not required to meet current demands;
- 14 (p) State funds that are not subject to the control and administration of officers or bodies spe-
- 15 cifically designated by law;
- 16 (q) Funds derived from the sale of state bonds;
- 17 (r) Social Security Revolving Account referred to in ORS 237.490;
- 18 (s) Investment funds of the State Board of Higher Education lawfully available for investment
- 19 or reinvestment;
- 20 (t) Local Government Employer Benefit Trust Fund referred to in ORS 657.513;
- 21 (u) Elderly and Disabled Special Transportation Fund established by ORS 391.800;
- 22 (v) Education Stability Fund established by ORS 348.696;
- 23 (w) Deferred Compensation Fund established under ORS 243.411; *[and]*
- 24 (x) Trust for Cultural Development Account established under ORS 359.405[.]; **and**
- 25 **(y) General Fund Operating Reserve Fund established under section 1 of this 2005 Act.**
- 26 (3) "Investment officer" means the State Treasurer in the capacity as investment officer for the
- 27 council.

28 **SECTION 7. This 2005 Act does not take effect unless the amendment to the Oregon**
29 **Constitution proposed by House Joint Resolution 42 (2005) is approved by the people at the**
30 **next regular general election held throughout this state. This 2005 Act takes effect on the**
31 **effective date of House Joint Resolution 42 (2005).**

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