

# Senate Bill 1101

Sponsored by JOINT COMMITTEE ON WAYS AND MEANS

## 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**.

Transfers moneys from specified funds and accounts to General Fund and to other funds and accounts.

Clarifies application of certain budgeting and allotment statutes.

Authorizes collection of costs of disciplinary actions by Board of Accountancy.

Prohibits Department of Transportation from charging fee for certain permits.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to state financial administration; creating new provisions; amending ORS 291.002, 291.201,  
3 366.507, 374.310 and 673.170; repealing section 3, chapter 766, Oregon Laws 2001; and declaring  
4 an emergency.

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

6 **SECTION 1. Notwithstanding any other provision of law, the amount of \$2 million is**  
7 **transferred from the Oregon JOBS Plus Unemployment Wage Fund, established by ORS**  
8 **657.925, to the General Fund to be available for general governmental expenses.**

9 **SECTION 2. Notwithstanding any other provision of law, the Secretary of State shall**  
10 **transfer the balance of the Portland Metropolitan Area Local Government Boundary Com-**  
11 **mission Fund, established by section 1 (1), chapter 793, Oregon Laws 1981, to the General**  
12 **Fund to be available for general governmental expenses.**

13 **SECTION 3. Notwithstanding any other provision of law, the Department of Human Ser-**  
14 **vices shall use \$7,518,057 from the moneys in the Tobacco Use Reduction Account, estab-**  
15 **lished by ORS 431.832, for the state medical assistance program for the biennium beginning**  
16 **July 1, 2005.**

17 **SECTION 4. (1) Notwithstanding ORS 414.815, the amount of \$836,557 is transferred from**  
18 **the Law Enforcement Medical Liability Account to the Department of Human Services Ac-**  
19 **count established in ORS 409.060.**

20 **(2) Notwithstanding ORS 411.894 (4), of the moneys in the Oregon JOBS Individual Edu-**  
21 **cation Account that are available for appropriation and transfer under ORS 411.894 (4), the**  
22 **amount of \$2,587,670 is transferred from the Oregon JOBS Individual Education Account to**  
23 **the Department of Human Services Account established in ORS 409.060.**

24 **SECTION 5. Notwithstanding any other provision of law, the amount of \$2,500,000 is**  
25 **transferred from the Problem Gambling Treatment Fund, established by ORS 409.435, to the**  
26 **Administrative Services Economic Development Fund, established by ORS 461.540, to be**  
27 **available for the biennium beginning July 1, 2005, for the purposes for which moneys in the**  
28 **Administrative Services Economic Development Fund may be used.**

29 **SECTION 6. Notwithstanding ORS 759.445 and section 34, chapter 1093, Oregon Laws 1999,**

**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 the amount of \$150,000 is transferred from the School Technology Account to the Depart-  
 2 ment of Education, for the biennium beginning July 1, 2005, for the Frontier Learning Net-  
 3 work. Moneys transferred under this section are appropriated to the department for the  
 4 purpose of paying expenses of the Frontier Learning Network.

5 **SECTION 7.** (1) In lieu of the transfer required by ORS 461.547, for the biennium begin-  
 6 ning July 1, 2005, the Oregon State Lottery Commission shall transfer from the State Lottery  
 7 Fund an amount equal to 2.5 percent of the net receipts from video lottery games as follows:

8 (a) To the office of the Governor for expenses of the Economic Revitalization Team es-  
 9 tablished by ORS 284.555, an amount equal to 50 percent of the amount allocated by law from  
 10 the Administrative Services Economic Development Fund established in ORS 461.540 to the  
 11 office of the Governor for expenses of the Economic Revitalization Team; and

12 (b) The balance of the 2.5 percent to the counties for economic development activities.

13 (2) Moneys transferred to counties under this section shall be distributed as provided in  
 14 ORS 461.547.

15 **SECTION 8.** ORS 291.002 is amended to read:

16 291.002. **Except as otherwise provided in ORS 291.201 and section 11 of this 2005 Act,** as  
 17 used in ORS 291.001 to 291.034, 291.201 to 291.222, 291.232 to 291.260, 291.261, 291.307 and 291.990,  
 18 unless the context requires otherwise:

19 (1) "Classification of expenditures" means the major groups or categories of expenditures for the  
 20 purpose of budget-making and accounting that are established as provided in ORS 291.206.

21 (2) "Department" means the Oregon Department of Administrative Services.

22 (3) "Director" means the Director of the Oregon Department of Administrative Services.

23 (4) "Dedicated fund" means a fund in the State Treasury, or a separate account or fund in the  
 24 General Fund in the State Treasury, that by law is dedicated, appropriated or set aside for a limited  
 25 object or purpose; but "dedicated fund" does not include a revolving fund or a trust fund.

26 (5) "Legislatively adopted budget" means the budget enacted by the Legislative Assembly during  
 27 a regular session.

28 (6) "Legislatively approved budget" means the legislatively adopted budget as modified by the  
 29 Emergency Board or by the Legislative Assembly meeting in special session.

30 (7) "Revolving fund" means a fund in the State Treasury, established by law, from which is paid  
 31 the cost of goods or services furnished to or by a state agency, and which is replenished through  
 32 charges made for such goods or services or through transfers from other accounts or funds; and  
 33 specifically includes funds derived from receipts by the State Board of Higher Education of tuition,  
 34 fees, dormitory earnings, student activity receipts and sales of products and services incident to  
 35 education functions.

36 (8) "Trust fund" means a fund in the State Treasury in which designated persons or classes of  
 37 persons have a vested beneficial interest or equitable ownership, or which was created or estab-  
 38 lished by a gift, grant, contribution, devise or bequest that limits the use of the fund to designated  
 39 objects or purposes.

40 (9) "State agency" or "agency" means every state officer, board, commission, department, insti-  
 41 tution, branch or agency of the state government, whose costs are paid wholly or in part from funds  
 42 held in the State Treasury, except:

43 (a) The Legislative Assembly, the courts and their officers and committees;

44 (b) The Public Defense Services Commission; and

45 (c) The Secretary of State and the State Treasurer in the performance of the duties of their

1 constitutional offices.

2 (10) "State officer" means any elected or appointed state officer, including members of boards  
3 and commissions, except the members and officers of the Legislative Assembly, the courts, the Sec-  
4 retary of State and the State Treasurer in the performance of the duties of their constitutional of-  
5 fices and the members of the Public Defense Services Commission.

6 **SECTION 9.** ORS 291.201 is amended to read:

7 291.201. **Notwithstanding ORS 291.002 (9) and (10), as used in ORS 291.201 to 291.222[,]:**

8 (1) "State agency" or "agency" means every state officer, board, commission, depart-  
9 ment, institution, branch or agency of the state government, whose costs are paid wholly  
10 or in part from funds held in the State Treasury, except:

11 (a) The Legislative Assembly, the courts and their officers and committees; and

12 (b) The Public Defense Services Commission.

13 (2) "State officer" means any elected or appointed state officer, including members of  
14 boards and commissions, except the members and officers of the Legislative Assembly, the  
15 courts and the members of the Public Defense Services Commission.

16 (3) "Tax expenditure" means any law of the federal government or this state that exempts, in  
17 whole or in part, certain persons, income, goods, services or property from the impact of established  
18 taxes, including but not limited to tax deductions, tax exclusions, tax subtractions, tax exemptions,  
19 tax deferrals, preferential tax rates and tax credits.

20 **SECTION 10.** Section 11 of this 2005 Act is added to and made a part of ORS 291.232 to  
21 291.260.

22 **SECTION 11.** Notwithstanding ORS 291.002 (9) and (10), as used in ORS 291.232 to 291.260:

23 (1) "State agency" or "agency" means every state officer, board, commission, depart-  
24 ment, institution, branch or agency of the state government, whose costs are paid wholly  
25 or in part from funds held in the State Treasury, except:

26 (a) The Legislative Assembly, the courts and their officers and committees; and

27 (b) The Public Defense Services Commission.

28 (2) "State officer" means any elected or appointed state officer, including members of  
29 boards and commissions, except the members and officers of the Legislative Assembly, the  
30 courts and the members of the Public Defense Services Commission.

31 **SECTION 12.** ORS 673.170 is amended to read:

32 673.170. (1) The Oregon Board of Accountancy may take any of the following disciplinary  
33 actions:

34 (a) Revoke, suspend or refuse to issue any certificate issued under ORS 673.040 to 673.075.

35 (b) Revoke, suspend or refuse to issue any public accountant's license issued under ORS 673.100.

36 (c) Revoke, suspend, refuse to renew or refuse to issue any permit described in ORS 673.150.

37 (d) Revoke, suspend, refuse to renew or refuse to issue authorization to practice public  
38 accountancy in this state under ORS 673.153.

39 (e) Censure the holder of any permit described in ORS 673.150 or authorization described in ORS  
40 673.153.

41 (f) Revoke, suspend, refuse to renew or refuse to issue any registration issued under ORS  
42 673.160.

43 (g) Censure the holder of any registration issued under ORS 673.160.

44 (2) The board may take any of the actions described in subsection (1) of this section for any one  
45 or any combination of the following causes:

- 1 (a) Fraud or deceit in obtaining or applying for:  
 2 (A) A certificate under ORS 673.040 to 673.075;  
 3 (B) A public accountant's license under ORS 673.100;  
 4 (C) A registration under ORS 58.345 or 673.160;  
 5 (D) A permit under ORS 673.150;  
 6 (E) Authorization to practice public accountancy in this state under the provisions of ORS  
 7 673.153; or  
 8 (F) Admission to the roster of authorized accountants referred to in ORS 297.670.  
 9 (b) Dishonesty, fraud or gross negligence in the practice of public accountancy.  
 10 (c) Incompetence in the practice of public accountancy. A holder of a license issued under ORS  
 11 673.100, certificate, permit or registration is incompetent in the practice of public accountancy if the  
 12 holder:  
 13 (A) Engages or has engaged in conduct that evidences a lack of ability or fitness to discharge  
 14 the duty owed to a client or the general public; or  
 15 (B) Engages or has engaged in conduct that evidences a lack of knowledge or ability to apply  
 16 principles or skills of the practice of public accountancy, as adopted by the board.  
 17 (d) Violation of any of the provisions of ORS 673.010 to 673.457.  
 18 (e) Violation of any of the provisions of ORS 297.405 to 297.555.  
 19 (f) Violation of any provision of the Code of Professional Conduct adopted by the board under  
 20 the authority granted by ORS 673.010 to 673.457, or rules adopted by the board under ORS 670.310.  
 21 (g) Conduct resulting in a conviction of a felony under the laws of any state, of any foreign ju-  
 22 risdiction or of the United States. However, such conduct may be considered only to the extent  
 23 permissible under the provisions of ORS 670.280.  
 24 (h) Conviction of any crime, an essential element of which is dishonesty, fraud or misrepresen-  
 25 tation, under the laws of any state, of any foreign jurisdiction or of the United States.  
 26 (i) Conviction of willful failure to pay any tax, file any tax return, keep records or supply in-  
 27 formation required under the tax laws of any state, of any foreign jurisdiction or of the United  
 28 States, or conviction of the willful making, rendering, delivery, disclosure, signing or verifying of  
 29 any false or fraudulent list, return, account, statement or other document, or of supplying any false  
 30 or fraudulent information, required under the tax laws of any state, of any foreign jurisdiction or  
 31 of the United States.  
 32 (j) Cancellation, revocation, suspension or refusal to renew, authority to practice as a certified  
 33 public accountant or a public accountant in any state or foreign jurisdiction.  
 34 (k) Cancellation, suspension, revocation or refusal to renew by any state, any foreign jurisdic-  
 35 tion or any federal agency of the right to practice law, to practice as an enrolled agent before the  
 36 Internal Revenue Service pursuant to 31 C.F.R. part 10, or to practice under other regulatory law  
 37 if the cancellation, suspension, revocation or refusal to renew was related to the practice of public  
 38 accountancy or if dishonesty, fraud or deception was involved.  
 39 (L) Failure to comply with the continuing education requirements under ORS 673.165 unless  
 40 such requirements have been waived by the board.  
 41 (m) Failure to pay a civil penalty imposed by the board after the period for requesting a hearing  
 42 on the civil penalty terminates if the person or business organization against whom the penalty is  
 43 imposed has not requested a hearing, or after the period for seeking judicial review of the order  
 44 assessing the civil penalty has passed.  
 45 (n) Failure to comply with the terms of a consent agreement described in subsection (3) of this

1 section.

2 (o) Failure to comply with any reporting or other requirement established by the board by rule.

3 (3) In lieu of disciplinary actions under subsection (1) of this section, the board may enter into  
 4 a consent agreement with the holder of any certificate described in ORS 673.040 to 673.075, the  
 5 holder of any public accountant’s license, the holder of any registration described in ORS 673.160,  
 6 the holder of any permit described in ORS 673.150 or the holder of any authorization described in  
 7 ORS 673.153, under which the holder agrees to comply with conditions prescribed by the board.

8 (4) In addition to the causes in subsection (2) of this section, the board may take any of the  
 9 actions described in subsection (1) of this section for dishonesty, fraud or misrepresentation not in  
 10 the practice of public accountancy.

11 (5) In lieu of or in addition to any action described in subsection (1) of this section, the board  
 12 may take any of the following actions:

13 (a) Require a holder of a permit under ORS 673.150 that provides compilation services or a  
 14 business organization registered under ORS 673.160 to undergo a peer review conducted as the  
 15 board may specify; or

16 (b) Require a holder of a permit under ORS 673.150 to complete any continuing professional  
 17 education programs the board may specify.

18 (6) In the case of a registered business organization, the board may take any of the actions de-  
 19 scribed in subsection (1) of this section for any of the following additional causes:

20 (a) The cancellation, revocation or suspension of, or refusal to renew, the authority to provide  
 21 professional services, in this state or any other jurisdiction, of any partner, officer, shareholder,  
 22 member, manager or owner of the business organization; or

23 (b) The cancellation, revocation or suspension of, or refusal to renew, the authority of the  
 24 business organization to practice public accountancy or provide other professional services in any  
 25 other state or foreign jurisdiction.

26 (7) Notwithstanding any protective order issued under ORCP 36 C, upon motion of the board,  
 27 the court shall order disclosure of materials or information subject to a protective order under  
 28 ORCP 36 C. The board may use the material or information to take disciplinary action under this  
 29 section.

30 **(8) If the board takes disciplinary action under this section, the board may assess against**  
 31 **the person disciplined costs associated with the disciplinary action. An assessment under this**  
 32 **subsection is in addition to, and not in lieu of, any other action taken by the board. Moneys**  
 33 **collected under this subsection shall be deposited in the Oregon Board of Accountancy Ac-**  
 34 **count established in the General Fund pursuant to ORS 670.335.**

35 **SECTION 13.** ORS 366.507, as amended by section 2, chapter 766, Oregon Laws 2001, and sec-  
 36 tion 15, chapter 618, Oregon Laws 2003, is amended to read:

37 366.507. The Department of Transportation shall use an amount equal to the **amount of** moneys  
 38 in the State Highway Fund that [*become*] **becomes** available for its use from the increase in tax  
 39 rates created by the amendments to ORS 319.020, 319.530, 825.476 and 825.480 by sections 1, 2 and  
 40 10 to 15, chapter 209, Oregon Laws 1985, and an amount equal to one-third of the **amount of** moneys  
 41 in the State Highway Fund that [*become*] **becomes** available for its use from any increase in tax  
 42 rates created by the amendments to ORS 319.020, 319.530, 825.476 and 825.480 by sections 5, 6 and  
 43 8 to 15, chapter 899, Oregon Laws 1987, and from any increase in tax rates that results from the  
 44 provisions of sections 16 and 17, chapter 899, Oregon Laws 1987, [*exclusively*] to establish **and op-**  
 45 **erate** a state modernization program for highways. The program established under this section and

1 the use of moneys in the program are subject to the following:

2 (1) The moneys may be used by the department to retire bonds that the department issues for  
3 the modernization program under bonding authority of the department.

4 (2) The intent of the modernization program is to increase highway safety, to accelerate im-  
5 provements from the backlog of needs on the state highways and to fund modernization of highways  
6 and local roads to support economic development in Oregon. Projects both on and off the state  
7 highway system are eligible.

8 (3) Projects to be implemented by the modernization program shall be selected by the Oregon  
9 Transportation Commission. The criteria for selection of projects will be established after public  
10 hearings that allow citizens an opportunity to review the criteria. The commission may use up to  
11 one-half of moneys available under this section for modernization projects selected by the commis-  
12 sion from a list of projects of statewide significance.

13 (4) In developing criteria for selection of projects, the commission shall consider the following:

14 (a) Projects must be of significance to the state highway system.

15 (b) Except for projects that are of statewide significance, projects must be equitably distributed  
16 throughout Oregon.

17 (c) Projects may be on county or city arterial roads connecting to or supporting a state highway.

18 (d) Priority may be given to projects that make a meaningful contribution to increased highway  
19 safety.

20 (e) Priority may also be given to projects that encourage economic development where:

21 (A) There is commitment by private industry to construct a facility.

22 (B) There is support from other state agencies.

23 (f) Priority may be given where there is local government or private sector financial partic-  
24 ipation, or both, in the improvement in addition to improvements adjacent to the project.

25 (g) Priority may be given where there is strong local support.

26 **(5) Except as otherwise provided in this subsection, federal moneys or moneys from the**  
27 **State Highway Fund other than those described in this section may be used for the mod-**  
28 **ernization program as long as the total amount used is equal to the amount described in this**  
29 **section. Federal moneys that are appropriated by Congress for specific projects and federal**  
30 **moneys that are allocated by the United States Department of Transportation for specific**  
31 **projects may not be used for the modernization program under this section.**

32 **SECTION 14. Section 3, chapter 766, Oregon Laws 2001, is repealed.**

33 **SECTION 15.** ORS 374.310 is amended to read:

34 374.310. (1) The Department of Transportation with respect to state highways and the county  
35 court or board of county commissioners with respect to county roads shall adopt reasonable rules  
36 and regulations and may issue permits, not inconsistent with law, for the use of the rights of way  
37 of such highways and roads for the purposes described in ORS 374.305. However, the department  
38 [*shall issue no*] **may not issue a** permit for the construction of any approach road at a location  
39 where no rights of access exist between the highway and abutting real property.

40 (2) Such rules and regulations and such permits shall include such provisions, terms and condi-  
41 tions as in the judgment of the granting authority may be in the best interest of the public for the  
42 protection of the highway or road and the traveling public and may include, but need not be limited  
43 to:

44 (a) Provisions for construction of culverts under approaches, requirements as to depth of fills  
45 over culverts and requirements for drainage facilities, curbs, islands and other facilities for traffic

1 channelization as may be deemed necessary.

2 (b) With respect to private road crossings, additional provisions for the angle of intersection,  
3 crossing at grade or other than grade, sight distances, safety measures including flaggers, crossing  
4 signs and signals, reinforcement for protection of the highway, maintenance of the crossing and for  
5 payment by the applicant of the costs of any of the foregoing.

6 (c) With respect to private road crossings, the granting authority may also require the applicant  
7 to furnish public liability and property damage insurance in a sum fixed by the granting authority,  
8 which insurance shall also indemnify the members, officers, employees and agents of such authority  
9 from any claim that might arise on account of the granting of the permit and the crossing of the  
10 highway or road by vehicles operating under the permit; and the granting authority may also require  
11 the applicant to furnish indemnity insurance, an indemnity bond or an irrevocable letter of credit  
12 issued by an insured institution as defined in ORS 706.008 in a sum fixed by the granting authority,  
13 indemnifying such authority for any damage to the highways or roads that may be caused by the  
14 use of the crossing.

15 (3) The powers granted by this section and ORS 374.315 may not be exercised so as to deny any  
16 property adjoining the road or highway reasonable access. In determining what is reasonable, the  
17 department or county court or board of county commissioners shall apply the following criteria:

18 (a) The access must be sufficient to allow the authorized uses for the property identified in the  
19 acknowledged local comprehensive plan.

20 (b) The type, number, size and location of approaches must be adequate to serve the volume and  
21 type of traffic reasonably anticipated to enter and exit the property, based on the planned uses for  
22 the property.

23 **(4) The department may not charge any fee for issuance of a permit under this section**  
24 **for construction of an approach road.**

25 **SECTION 16. This 2005 Act being necessary for the immediate preservation of the public**  
26 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**  
27 **on its passage.**

28