

House Bill 3028

Sponsored by Representative LIM

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 Rainy-Day Fund, directs corporate surplus "kicker" revenues into Rainy-Day Fund, applicable to biennia beginning on or after July 1, 2005.

Takes effect upon passage of amendment to Oregon Constitution proposed by House Joint Resolution 36 (2007).

A BILL FOR AN ACT

1
2 Relating to corporate surplus revenues; creating new provisions; amending ORS 291.349 and 305.792;
3 and prescribing an effective date.

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

5 **SECTION 1.** ORS 291.349 is amended to read:

6 291.349. (1) As soon as practicable after adjournment sine die of the regular session of the
7 Legislative Assembly, the Oregon Department of Administrative Services shall report to the Emer-
8 gency Board the estimate as of July 1 of the first year of the biennium of General Fund and State
9 Lottery Fund revenues that will be received by the state during that biennium. The Oregon De-
10 partment of Administrative Services shall base its estimate on the last forecast given to the Legis-
11 lative Assembly before adjournment sine die of the regular session on which the printed, adopted
12 budget prepared in the Oregon Department of Administrative Services is based, adjusted only insofar
13 as necessary to reflect changes in laws adopted at that session. The report shall contain the esti-
14 mated revenues from corporate income and excise taxes separately from the estimated revenues from
15 other General Fund sources. The Oregon Department of Administrative Services may revise the es-
16 timate if necessary following adjournment sine die of any special or emergency session of the Leg-
17 islative Assembly but any revision does not affect the basis of the computation described in
18 subsection (3) or (4) of this section.

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

24 (3) If the revenues received from the corporate income and excise taxes during the biennium
25 exceed the amounts estimated to be received from such taxes for the biennium, as estimated after
26 adjournment sine die of the regular session, by two percent or more, the total amount of that excess
27 shall be **deposited into the Rainy-Day Fund established under section 3 of this 2007 Act** [*cred-*
28 *ited to corporate income and excise taxpayers in a percentage amount of corporate excise and income*
29 *tax liability as determined under subsection (5) of this section. However, no credit shall be allowed*
30 *against tax liability imposed by ORS 317.090*].

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 (4) If the revenues received from General Fund revenue sources, exclusive of those described in
 2 subsection (3) of this section, during the biennium exceed the amounts estimated to be received from
 3 such sources for the biennium, as estimated after adjournment sine die of the regular session, by two
 4 percent or more, there shall be refunded from personal income tax revenues an amount equal to the
 5 total amount of that excess, reduced by the cost certified by the Department of Revenue under ORS
 6 291.351 as being allocable to payments described under this subsection. The excess amount to be
 7 refunded shall be paid to personal income taxpayers in a percentage amount of prior year personal
 8 income tax liability as determined under subsection [(6)] (5) of this section.

9 [(5) *If there is an excess to be credited under subsection (3) of this section, on or before October*
 10 *1, following the end of each biennium, the Oregon Department of Administrative Services shall deter-*
 11 *mine and certify to the Department of Revenue the percentage amount of credit for purposes of sub-*
 12 *section (3) of this section. The percentage amount determined shall be a percentage amount to the*
 13 *nearest one-tenth of a percent that will distribute the excess to be credited to corporate excise and in-*
 14 *come taxpayers for taxable years beginning in the calendar year during which the excess is determined.*
 15 *The credit shall be computed after the allowance of any other credit or offset against tax liability al-*
 16 *lowed or allowable under any provision of law of this state, and before the application of estimated tax*
 17 *payments, withholding or other advance tax payments.*]

18 [(6)] (5)(a) If there is an excess to be refunded under subsection (4) of this section, on or before
 19 September 15, following the end of each biennium, the Oregon Department of Administrative Ser-
 20 vices shall determine and certify to the Department of Revenue the percentage amount of refund
 21 payment for purposes of subsection (4) of this section. The percentage amount so determined shall
 22 be a percentage amount to the nearest one-hundredth of a percent that will distribute the excess to
 23 be refunded to personal income taxpayers under subsection (4) of this section. The percentage
 24 amount shall equal the amount distributed under subsection (4) of this section divided by the esti-
 25 mated total personal income tax liability for all personal income taxpayers for tax years beginning
 26 in the calendar year immediately preceding the calendar year in which the excess is determined.

27 (b) The Department of Revenue shall multiply the percentage amount determined under para-
 28 graph (a) of this subsection by the total amount of a personal income taxpayer's tax liability for the
 29 tax year beginning in the calendar year immediately preceding the calendar year in which the ex-
 30 cess is determined in order to calculate the amount of the refund to be made to the taxpayer.

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

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

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

38 (A) For a tax year beginning in the calendar year immediately preceding the calendar year in
 39 which the excess is determined for which refund is being made; and

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

41 [(7)] (6) No refund shall be made to a taxpayer if, after making the calculation described under
 42 subsection [(6)] (5) of this section, the amount calculated is less than \$1.

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

44 305.792. (1) The Department of Revenue shall cause a checkoff box to be printed on the personal
 45 income [*and corporate income or excise*] tax returns for the appropriate tax year, by which a tax-

1 payer may indicate that a surplus refund payment [*or credit*] that the taxpayer may otherwise be
 2 entitled to under ORS 291.349 shall instead be used for funding education.

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

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

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

16 [(b) A taxpayer that checks the appropriate checkoff box indicating that the credit will not be
 17 claimed but that nevertheless claims the credit in determining the taxpayer's tax liability shall be con-
 18 sidered to have not made the election under this subsection.]

19 [(c) The election to not claim a credit under this subsection may not be revoked by filing an
 20 amended return.]

21 [(4)] (3) After the determination that surplus refund payments are to be made under ORS 291.349
 22 (4) and [(6)] (5), the department shall determine the total amount of such payments for which an
 23 election to donate to public elementary and secondary education has been made and shall certify
 24 this amount to the State Treasurer. Following the department's certification to the State Treasurer,
 25 an election to donate that biennium's surplus refund payments under subsection (2) of this section
 26 is irrevocable.

27 [(5) Following the determination to credit corporate income and excise taxes pursuant to ORS
 28 291.349 (3) and (5), the department shall annually certify the total amount of allowable credits that have
 29 not been claimed pursuant to an election made under subsection (3) of this section. The certification
 30 shall be made on or before December 31 of each year, until the tax year for which the credit would
 31 otherwise be claimed becomes a closed tax year.]

32 **SECTION 3. The Rainy-Day Fund is established separate and distinct from the General**
 33 **Fund. Moneys in the fund may be appropriated for any purpose consistent with section 14,**
 34 **Article IX of the Oregon Constitution.**

35 **SECTION 4. The amendments to ORS 291.349 and 305.792 by sections 1 and 2 of this 2007**
 36 **Act apply to biennia beginning on or after July 1, 2005.**

37 **SECTION 5. This 2007 Act does not take effect unless the amendment to the Oregon**
 38 **Constitution proposed by House Joint Resolution 36 (2007) is approved by the people at a**
 39 **special election held throughout this state on the same date as the next primary election.**
 40 **This 2007 Act takes effect on the effective date of that constitutional amendment.**