

**A-Engrossed**  
**Senate Bill 48**

Ordered by the Senate February 26  
Including Senate Amendments dated February 26

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Commission on Educational Excellence)

**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.

*[Implements repeal of corporate surplus "kicker" refund proposed in Senate Joint Resolution 3 (2007), and transfers corporate income and excise tax revenues that exceed estimate of corporate income and excise taxes to school capital matching subaccount of education stability fund.]*

**Establishes Rainy Day Savings Account. Requires that if revenues from corporate income and excise taxes exceed two percent of estimate for biennium, total amount of excess be transferred to account.**

**Requires that after ending balance for biennium is determined, amount equal to one percent of General Fund appropriations for biennium be transferred from ending balance to account. Requires that if ending balance does not equal or exceed one percent of General Fund appropriations, entire ending balance be transferred to account.**

**Establishes Education Capital Construction Account. Specifies that moneys in account may be used only for capital construction projects for public education. Requires that if moneys in Rainy Day Savings Account equal 10 percent of General Fund revenues collected during prior biennium, moneys that otherwise would have been transferred to Rainy Day Savings Account be transferred to Education Capital Construction Account.**

**Provides that Legislative Assembly may appropriate moneys from Rainy Day Savings Account only under specified conditions.**

**Does not take effect unless voters approve Senate Joint Resolution 3 (2007) at special election. Takes effect on [effective date of constitutional amendments proposed in] 91st day following adjournment of Seventy-fourth Legislative Assembly if voters approve resolution.**

**A BILL FOR AN ACT**

1  
2 Relating to corporate tax revenues in excess of estimates; creating new provisions; amending ORS  
3 291.349 and 305.792; 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-

**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 islative Assembly but any revision does not affect the basis of the computation described in  
2 subsection (3) or (4) of this section.

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

8 (3) If the revenues received from the corporate income and excise taxes during the biennium  
9 exceed the amounts estimated to be received from such taxes for the biennium, as estimated after  
10 adjournment sine die of the regular session, by two percent or more, the total amount of that excess  
11 shall be [*credited to corporate income and excise taxpayers in a percentage amount of corporate excise*  
12 *and income tax liability as determined under subsection (5) of this section. However, no credit shall*  
13 *be allowed against tax liability imposed by ORS 317.090]* **transferred to the Rainy Day Savings**  
14 **Account established in section 5 of this 2007 Act.**

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

23 (5) If there is an excess to be [*credited*] **transferred** under subsection (3) of this section, on or  
24 before October 1, following the end of each biennium, the Oregon Department of Administrative  
25 Services shall determine and certify to the [*Department of Revenue the percentage amount of credit*  
26 *for purposes of subsection (3) of this section. The percentage amount determined shall be a percentage*  
27 *amount to the nearest one-tenth of a percent that will distribute the excess to be credited to corporate*  
28 *excise and income taxpayers for taxable years beginning in the calendar year during which the excess*  
29 *is determined. The credit shall be computed after the allowance of any other credit or offset against tax*  
30 *liability allowed or allowable under any provision of law of this state, and before the application of*  
31 *estimated tax payments, withholding or other advance tax payments]* **State Treasurer the amount**  
32 **to be transferred under subsection (3) of this section, and the State Treasurer shall transfer**  
33 **the amount certified.**

34 (6)(a) If there is an excess to be refunded under subsection (4) of this section, on or before  
35 September 15, following the end of each biennium, the Oregon Department of Administrative Ser-  
36 vices shall determine and certify to the Department of Revenue the percentage amount of refund  
37 payment for purposes of subsection (4) of this section. The percentage amount so determined shall  
38 be a percentage amount to the nearest one-hundredth of a percent that will distribute the excess to  
39 be refunded to personal income taxpayers under subsection (4) of this section. The percentage  
40 amount shall equal the amount distributed under subsection (4) of this section divided by the esti-  
41 mated total personal income tax liability for all personal income taxpayers for tax years beginning  
42 in the calendar year immediately preceding the calendar year in which the excess is determined.

43 (b) The Department of Revenue shall multiply the percentage amount determined under para-  
44 graph (a) of this subsection by the total amount of a personal income taxpayer's tax liability for the  
45 tax year beginning in the calendar year immediately preceding the calendar year in which the ex-

cess is determined in order to calculate the amount of the refund to be made to the taxpayer.

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

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

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

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

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

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

**SECTION 2. The amendments to ORS 291.349 by section 1 of this 2007 Act apply to biennia beginning on or after July 1, 2005.**

**SECTION 3.** ORS 305.792 is amended to read:

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

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

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

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

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

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

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

*[(5) Following the determination to credit corporate income and excise taxes pursuant to ORS 291.349 (3) and (5), the department shall annually certify the total amount of allowable credits that have*

1 *not been claimed pursuant to an election made under subsection (3) of this section. The certification*  
2 *shall be made on or before December 31 of each year, until the tax year for which the credit would*  
3 *otherwise be claimed becomes a closed tax year.]*

4 **SECTION 4.** The amendments to ORS 305.792 by section 3 of this 2007 Act apply to tax  
5 years beginning on or after January 1, 2007.

6 **SECTION 5.** The Rainy Day Savings Account is established as an account in the General  
7 Fund. The account shall consist of:

- 8 (1) Moneys transferred to the account under ORS 291.349 (3);  
9 (2) Moneys transferred to the account under section 6 of this 2007 Act; and  
10 (3) Any other moneys transferred to the account by law.

11 **SECTION 6.** (1) As used in this section:

12 (a) "Ending balance" means the difference between the amount of General Fund revenues  
13 collected during a biennium and the amount of General Fund appropriations for the  
14 biennium.

15 (b) "General Fund appropriations" means the amount of moneys appropriated from the  
16 General Fund for a biennium in the legislatively approved budget for the biennium, minus  
17 the amount of any General Fund appropriation balances for that biennium that revert to the  
18 General Fund under ORS 293.190.

19 (c) "Legislatively approved budget" has the meaning given that term in ORS 291.002.

20 (2) As soon as possible after the ending balance for a biennium is determined, an amount  
21 equal to one percent of the amount of General Fund appropriations for that biennium shall  
22 be transferred from the ending balance to the Rainy Day Savings Account. If the ending  
23 balance does not equal or exceed one percent of the amount of General Fund appropriations,  
24 the entire ending balance shall be transferred to the Rainy Day Savings Account.

25 **SECTION 7.** Notwithstanding ORS 291.349 (3) and section 6 of this 2007 Act, if the moneys  
26 in the Rainy Day Savings Account equal 10 percent of the amount of General Fund revenues  
27 collected during the prior biennium, moneys that would otherwise be transferred to the  
28 Rainy Day Savings Account shall be transferred to the Education Capital Construction Ac-  
29 count established in section 8 of this 2007 Act.

30 **SECTION 8.** The Education Capital Construction Account is established as an account in  
31 the General Fund. The account shall consist of moneys transferred to the account under  
32 section 7 of this 2007 Act. Moneys in the account may be used only for capital construction  
33 projects for public education.

34 **SECTION 9.** (1) The Legislative Assembly may appropriate moneys from the Rainy Day  
35 Savings Account only if:

36 (a) The Legislative Assembly finds one of the following:

37 (A) That the last quarterly economic and revenue forecast for a biennium indicates that  
38 moneys available to the General Fund for the next biennium will be at least three percent  
39 less than appropriations from the General Fund for the current biennium;

40 (B) That there has been a decline for two or more consecutive quarters in the last 12  
41 months in seasonally adjusted nonfarm payroll employment; or

42 (C) That a quarterly economic and revenue forecast projects that revenues in the Gen-  
43 eral Fund in the current biennium will be at least two percent below what the revenues were  
44 projected to be in the revenue forecast on which the legislatively adopted budget, as defined  
45 in ORS 291.002, for the current biennium was based; or

1       **(b) The appropriation is approved by three-fifths of the members serving in each house**  
2 **of the Legislative Assembly and the Governor declares an emergency.**

3       **(2) The Legislative Assembly may not appropriate more than two-thirds of the amount**  
4 **of the Rainy Day Savings Account for any one biennium.**

5       **SECTION 10. (1) This 2007 Act does not take effect unless the amendment to the Oregon**  
6 **Constitution proposed by Senate Joint Resolution 3 (2007) is approved by the people at a**  
7 **special election held throughout this state as provided in chapter \_\_\_\_\_, Oregon Laws 2007**  
8 **(Enrolled Senate Bill 549).**

9       **(2) If the amendment to the Oregon Constitution proposed by Senate Joint Resolution 3**  
10 **(2007) is approved by the people at a special election held throughout this state as provided**  
11 **in chapter \_\_\_\_\_, Oregon Laws 2007 (Enrolled Senate Bill 549), this 2007 Act takes effect**  
12 **on the 91st day after the date on which the regular session of the Seventy-fourth Legislative**  
13 **Assembly adjourns sine die.**

14 \_\_\_\_\_