

# House Bill 2162

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Presession filed (at the request of Governor John A. Kitzhaber for Oregon Business Development Department)

## 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**.

Authorizes Oregon Business Development Department to administer Oregon Business Retention and Expansion Program to grant incremental Oregon Business Retention and Expansion Program tax revenues to certified employers. Specifies provisions of grants.

Establishes Oregon Business Retention and Expansion Program Grant Fund. Continuously appropriates moneys in fund to Oregon Business Development Department.

Appropriates moneys from General Fund to department for purposes of administering program.

Specifies rate of withholding on taxable income of person employed by certified employer.

Applies to tax years beginning on or after January 1, 2012.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

Relating to incentives for business hiring; appropriating money; and prescribing an effective date.

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

**SECTION 1. As used in sections 1 to 8 of this 2011 Act:**

(1) **"Certified employer" means an eligible employer that has been certified under section 3 of this 2011 Act.**

(2) **"Compensation" has the meaning given that term in ORS 314.610.**

(3) **"Eligible employer" means an employer that, in the month in which the employer submits an application under section 4 of this 2011 Act:**

(a) **Has at least 150 employees;**

(b) **Averages \$60,000 annually in per-employee compensation, including the cost of benefits;**

(c) **Plans to hire at least 50 new full-time employees in this state;**

(d) **Operates in an industry in the traded sector, as that term is defined in ORS 285A.010;**

(e) **Is not a retailer, as that term is defined in ORS 72.8010; and**

(f) **Does not engage in professional service, as that term is defined in ORS 58.015, as its primary business.**

(4) **"Incremental Oregon Business Retention and Expansion Program tax revenues" means:**

(a) **The Oregon personal income tax revenues that are generated from the Oregon personal income tax liabilities shown on the income tax returns filed by persons hired by eligible employers in the two consecutive tax years beginning with the tax year in which the employer receives certification under section 3 of this 2011 Act, including revenues that are generated from the tax liabilities of spouses of persons employed by eligible employers if the tax liabilities are reported on a joint return; or**

(b) **If Oregon personal income tax rates are reduced after the dates of the grant agreements described in section 6 of this 2011 Act and the grant agreements provide that pay-**

**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 ments will be based on rates in effect when the grant agreements are executed, the Oregon  
 2 personal income tax revenues generated from the tax liabilities, as described in paragraph  
 3 (a) of this subsection, that would have been due if the liabilities were calculated using per-  
 4 sonal income tax rates in effect on the date of execution of the grant agreements.

5 (5) "Tax liabilities" means the tax determined under ORS chapter 316 for the tax year,  
 6 less the credits allowed for purposes of ORS chapter 316 for the tax year.

7 **SECTION 2.** The Oregon Business Development Department may adopt administrative  
 8 rules that the department determines are necessary to:

9 (1) Further define the terms defined in section 1 of this 2011 Act in a manner consistent  
 10 with section 1 of this 2011 Act;

11 (2) Implement the duties of the department under sections 1 to 8 of this 2011 Act; and

12 (3) Carry out the purposes of sections 1 to 8 of this 2011 Act.

13 **SECTION 3.** (1) Subject to standards and procedures that the Oregon Business Develop-  
 14 ment Department shall establish by rule, the department shall certify eligible employers to  
 15 participate in the Oregon Business Retention and Expansion Program established in section  
 16 6 of this 2011 Act. The department may establish standards:

17 (a) Requiring that employers maintain certain levels of payroll or per-employee compen-  
 18 sation, including benefits;

19 (b) Requiring that employers consult with vendors in this state before entering into  
 20 contracts;

21 (c) Ensuring that eligible employers do not lay off current employees in order to achieve  
 22 hiring goals;

23 (d) Specifying the types and amounts of employer expenses that are the reasonable costs  
 24 of financing, developing, furnishing and operating a facility to be used in the course of busi-  
 25 ness by the certified employer under section 6 of this 2011 Act; and

26 (e) For verifying that an employer is an eligible employer.

27 (2) Prior to issuing a certification under this section, the Oregon Business Development  
 28 Department shall enter into a grant agreement with the eligible employer as described in  
 29 section 6 of this 2011 Act. The agreement must contain a statement by the eligible employer  
 30 that the eligible employer would not have hired 50 or more new employees but for the  
 31 availability of the program established under section 6 of this 2011 Act. The agreement must  
 32 contain detailed performance measures with which the eligible employer must comply.

33 (3) The department must approve or disapprove an application under this section within  
 34 120 days after the date the application is filed.

35 **SECTION 4.** (1) A person may apply to the Oregon Business Development Department for  
 36 certification under section 3 of this 2011 Act.

37 (2) The application shall be made in writing in a form prescribed by the department.

38 (3) The application shall be accompanied by the fee established under subsection (4) of  
 39 this section. The fee may be refunded if the application for certification is disapproved.

40 (4) By rule and after hearing, the department may adopt a schedule of reasonable fees  
 41 that the department may require of applicants for certification under section 3 of this 2011  
 42 Act.

43 **SECTION 5.** (1) Pursuant to the procedures for a contested case under ORS chapter 183,  
 44 the Oregon Business Development Department may order the revocation of a certificate is-  
 45 sued under section 3 of this 2011 Act, if the department finds that:

1 (a) The certificate was obtained by fraud or misrepresentation; or

2 (b) The certified employer fails to meet the requirements of section 3 of this 2011 Act.

3 (2) As soon as the order of revocation under this section has become final, the Oregon  
4 Business Development Department shall notify the Department of Revenue of the order.

5 (3) If the certificate is ordered revoked pursuant to subsection (1) of this section, the  
6 Oregon Business Development Department shall proceed to recoup any grant moneys dis-  
7 bursed to the employer pursuant to section 6 of this 2011 Act.

8 **SECTION 6.** (1) In consultation with the Department of Revenue, the Oregon Business  
9 Development Department shall establish and administer the Oregon Business Retention and  
10 Expansion Program. The purpose of the program is to provide grants to certified employers  
11 to allow for expanded operations and increased hiring.

12 (2) The Oregon Business Development Department shall enter into one or more grant  
13 agreements with certified employers. The grant agreements must:

14 (a) Provide that the grant moneys may be used only to pay for the costs of financing,  
15 developing, furnishing and operating a facility to be used by the certified employer in the  
16 course of business.

17 (b) Require that the grantees return to the Oregon Business Development Department,  
18 for deposit in the General Fund, amounts transferred to the grantees from the Oregon  
19 Business Retention and Expansion Program Grant Fund that exceed the actual incremental  
20 Oregon Business Retention and Expansion Program tax revenues for the certified employer,  
21 as described in subsection (3) of this section.

22 (3) The total grant amount distributed to a certified employer under this section may not  
23 exceed the total of the estimated incremental Oregon Business Retention and Expansion  
24 Program tax revenues for the certified employer:

25 (a) For the tax year in which the employer receives certification under section 3 of this  
26 2011 Act; and

27 (b) For the tax year following the tax year in which the employer receives certification  
28 under section 3 of this 2011 Act.

29 (4) Moneys granted under this section must be distributed to the certified employer no  
30 later than 120 days following certification under section 3 of this 2011 Act.

31 **SECTION 7.** The Director of the Department of Revenue shall:

32 (1) Specify the methodology for estimating incremental Oregon Business Retention and  
33 Expansion Program tax revenues;

34 (2) Estimate incremental Oregon Business Retention and Expansion Program tax reven-  
35 ues; and

36 (3) Notify the Director of the Oregon Business Development Department of the estimated  
37 incremental Oregon Business Retention and Expansion Program tax revenues.

38 **SECTION 8.** The Oregon Business Retention and Expansion Program Grant Fund is es-  
39 tablished in the State Treasury, separate and distinct from the General Fund. The Oregon  
40 Business Retention and Expansion Program Grant Fund consists of amounts deposited in the  
41 fund as required by section 15 of this 2011 Act and other moneys transferred to the fund.  
42 Amounts in the fund are continuously appropriated to the Oregon Business Development  
43 Department for the purposes of making the grants provided by the grant agreements entered  
44 into under section 6 of this 2011 Act and paying the costs and expenses of the Oregon Busi-  
45 ness Development Department and the Department of Revenue in connection with the im-

1 plementation and administration of sections 1 to 8 and 11 to 15 of this 2011 Act.

2 **SECTION 9.** There is appropriated to the Oregon Business Development Department, for  
 3 the biennium beginning July 1, 2011, out of the General Fund, the amount of \$\_\_\_\_\_ for the  
 4 purpose of carrying out the provisions of section 6 of this 2011 Act.

5 **SECTION 10.** Sections 11 to 15 of this 2011 Act are added to and made a part of ORS  
 6 316.162 to 316.221.

7 **SECTION 11.** As used in sections 11 to 15 of this 2011 Act, “certified employer” and  
 8 “compensation” have the meanings given those terms in section 1 of this 2011 Act.

9 **SECTION 12.** (1) A certified employer, in lieu of the withholding requirements under ORS  
 10 316.167, shall withhold eight percent of the wages of employees hired by the certified em-  
 11 ployer in each of the two consecutive tax years beginning with the tax year in which the  
 12 employer receives certification under section 3 of this 2011 Act, as provided in this section  
 13 and by rule of the Department of Revenue.

14 (2) The certified employer withholding amounts under this section shall pay the amounts  
 15 withheld to the Department of Revenue at the time and in the manner prescribed by the  
 16 department by rule.

17 (3) This section applies to tax years beginning on or after January 1, 2012, and before  
 18 January 1, 2022.

19 **SECTION 13.** In addition to other reports and returns required by law or rule, a certified  
 20 employer required to withhold compensation under section 12 of this 2011 Act shall file an  
 21 annual report with the Department of Revenue stating:

- 22 (1) The total amount of compensation paid during the year to employees hired in that tax  
 23 year by the certified employer;
- 24 (2) The taxpayer identification number of each employee of the certified employer;
- 25 (3) The compensation paid to each employee of the certified employer; and
- 26 (4) The amount withheld under section 12 of this 2011 Act for each employee hired by the  
 27 certified employer.

28 **SECTION 14.** (1) The Department of Revenue may adopt administrative rules that the  
 29 department determines are necessary to:

- 30 (a) Implement the duties of the department under sections 11 to 15 of this 2011 Act; and
- 31 (b) Carry out the purposes of sections 11 to 15 of this 2011 Act.

32 (2) The rules may include rules construing ORS 316.162 to 316.221 in a manner that is  
 33 consistent and compatible with the withholding provisions of sections 11 to 15 of this 2011  
 34 Act.

35 **SECTION 15.** (1) For tax years beginning on or after January 1, 2012, and before January  
 36 1, 2013, the revenues received by the Department of Revenue under section 12 of this 2011  
 37 Act shall be transferred to the Oregon Business Retention and Expansion Program Grant  
 38 Fund established in section 8 of this 2011 Act.

39 (2) For tax years beginning on or after January 1, 2013, and before January 1, 2017, the  
 40 revenues received by the Department of Revenue under section 12 of this 2011 Act shall be  
 41 distributed as follows:

- 42 (a) Fifty percent shall be transferred to the Oregon Business Retention and Expansion  
 43 Program Grant Fund established in section 8 of this 2011 Act.
- 44 (b) Fifty percent shall be transferred to the General Fund.
- 45 (3) For tax years beginning on or after January 1, 2017, and before January 1, 2022, the

1 revenues received by the Department of Revenue under section 12 of this 2011 Act shall be  
2 distributed as follows:

3 (a) Twenty percent shall be transferred to the Oregon Business Retention and Expansion  
4 Program Grant Fund established in section 8 of this 2011 Act.

5 (b) Eighty percent shall be transferred to the General Fund.

6 SECTION 16. This 2011 Act applies to tax years beginning on or after January 1, 2012.

7 SECTION 17. This 2011 Act takes effect on the 91st day after the date on which the 2011  
8 session of the Seventy-sixth Legislative Assembly adjourns sine die.

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