

# Senate Bill 219

Sponsored by Senator DEVLIN, Representative READ; Senators EDWARDS, HASS, MONNES ANDERSON (Pre-session filed.)

## 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 lend incremental Oregon Business Retention and Expansion Program tax revenues to certified employers. Specifies provisions of forgivable loan program.

Establishes Oregon Business Retention and Expansion Program 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

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

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

3 **SECTION 1. As used in sections 1 to 7 of this 2011 Act:**

4 (1) **"Certified employer" means an eligible employer that has been certified under section**  
5 **3 of this 2011 Act.**

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

7 (3) **"Distressed area" has the meaning given that term in ORS 285A.010.**

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

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

11 (b)(A) **Averages 150 percent of the state average in annual per-employee compensation,**  
12 **including the cost of benefits; or**

13 (B) **If doing business in a distressed area or a rural area, averages at least 150 percent**  
14 **of the county average in annual per-employee compensation, including the cost of benefits;**

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

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

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

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

20 (5) **"Incremental Oregon Business Retention and Expansion Program tax revenues"**  
21 **means:**

22 (a) **The Oregon personal income tax revenues that are generated from the Oregon per-**  
23 **sonal income tax liabilities shown on the income tax returns filed by persons hired by eligible**  
24 **employers in the two consecutive tax years beginning with the tax year following the tax**  
25 **year in which the employer receives certification under section 3 of this 2011 Act, including**  
26 **revenues that are generated from the tax liabilities of spouses of persons employed by eligi-**  
27

**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 ble employers if the tax liabilities are reported on a joint return; or

2 (b) If Oregon personal income tax rates are reduced after the dates of the agreements  
3 described in section 6 of this 2011 Act and the agreements provide that payments will be  
4 based on rates in effect when the agreements are executed, the Oregon personal income tax  
5 revenues generated from the tax liabilities, as described in paragraph (a) of this subsection,  
6 that would have been due if the liabilities were calculated using personal income tax rates  
7 in effect on the date of execution of the agreements.

8 (6) "Rural area" has the meaning given that term in ORS 285A.010.

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

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

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

15 (2) Implement the duties of the department under sections 1 to 7 of this 2011 Act; and

16 (3) Carry out the purposes of sections 1 to 7 of this 2011 Act.

17 **SECTION 3.** (1) Subject to standards and procedures that the Oregon Business Develop-  
18 ment Department shall establish by rule, the department shall certify eligible employers to  
19 participate in the Oregon Business Retention and Expansion Program established in section  
20 6 of this 2011 Act. The department may establish certification standards:

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

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

25 (c) Requiring that eligible employers do not lay off current employees in order to achieve  
26 hiring goals;

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

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

31 (2) Prior to issuing a certification under this section, the department shall enter into an  
32 agreement with the eligible employer as described in section 6 of this 2011 Act. The agree-  
33 ment must contain a statement by the eligible employer that the eligible employer would not  
34 have hired 50 or more new employees but for the availability of the program established  
35 under section 6 of this 2011 Act. The agreement must contain detailed performance measures  
36 with which the eligible employer must comply.

37 (3) The department must approve or disapprove a complete application under this section  
38 within 120 days after the date the application is filed.

39 **SECTION 4.** (1) An employer may apply to the Oregon Business Development Department  
40 for certification under section 3 of this 2011 Act.

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

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

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

1 Act.

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

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

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

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

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

12 **SECTION 6.** (1) In consultation with the Department of Revenue, the Oregon Business  
13 Development Department shall establish and administer the Oregon Business Retention and  
14 Expansion Program. The purpose of the program is to provide forgivable loans to certified  
15 employers to allow for expanded operations and increased hiring.

16 (2) The Oregon Business Development Department shall enter into agreements with  
17 certified employers. An agreement must require that the certified employer return to the  
18 Oregon Business Development Department, for deposit in the General Fund, amounts  
19 transferred to the certified employer from the Oregon Business Retention and Expansion  
20 Program Fund that exceed the actual incremental Oregon Business Retention and Expansion  
21 Program tax revenues for the certified employer.

22 (3) The total loan 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 following the tax year in which the employer receives certification  
26 under section 3 of this 2011 Act; and

27 (b) For the tax year following the tax year described in paragraph (a) of this subsection.

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

30 **SECTION 7.** The Director of the Oregon Business Development Department shall:

31 (1) In consultation with the Director of the Department of Revenue, specify the meth-  
32 odology for estimating incremental Oregon Business Retention and Expansion Program tax  
33 revenues; and

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

36 **SECTION 8.** The Oregon Business Retention and Expansion Program Fund is established  
37 in the State Treasury, separate and distinct from the General Fund. The Oregon Business  
38 Retention and Expansion Program Fund consists of amounts deposited in the fund as re-  
39 quired by section 15 of this 2011 Act and other moneys transferred to the fund. Amounts in  
40 the fund are continuously appropriated to the Oregon Business Development Department for  
41 the purposes of making the loans provided by the agreements entered into under section 6  
42 of this 2011 Act and paying the costs and expenses of the Oregon Business Development  
43 Department and the Department of Revenue in connection with the implementation and ad-  
44 ministration of sections 1 to 7 and 11 to 15 of this 2011 Act.

45 **SECTION 9.** There is appropriated to the Oregon Business Development Department, for

1 the biennium beginning July 1, 2011, out of the General Fund, the amount of \$\_\_\_\_\_ for the  
 2 purpose of carrying out the provisions of section 6 of this 2011 Act.

3 **SECTION 10.** Sections 11 to 15 of this 2011 Act are added to and made a part of ORS  
 4 316.162 to 316.221.

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

7 **SECTION 12.** (1) A certified employer, in lieu of the withholding requirements under ORS  
 8 316.167, shall withhold eight percent of the wages of employees hired by the certified em-  
 9 ployer in each of the two consecutive tax years beginning with the tax year in which the  
 10 employer receives certification under section 3 of this 2011 Act, as provided in this section  
 11 and by rule of the Oregon Business Development Department.

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

15 **SECTION 13.** In addition to other reports and returns required by law or rule, a certified  
 16 employer required to withhold compensation under section 12 of this 2011 Act shall file an  
 17 annual report with the Oregon Business Development Department stating:

18 (1) The total amount of compensation paid during the year to employees hired in that tax  
 19 year by the certified employer;

20 (2) The taxpayer identification number of each employee of the certified employer;

21 (3) The compensation paid to each employee of the certified employer; and

22 (4) The amount withheld under section 12 of this 2011 Act for each employee hired by the  
 23 certified employer.

24 **SECTION 14.** (1) The Oregon Business Development Department may adopt administra-  
 25 tive rules that the department determines are necessary to:

26 (a) Implement the duties of the department under sections 11 to 15 of this 2011 Act; and

27 (b) Carry out the purposes of sections 11 to 15 of this 2011 Act.

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

31 **SECTION 15.** The revenues received by the Department of Revenue under section 12 of  
 32 this 2011 Act shall be transferred to the Oregon Business Retention and Expansion Program  
 33 Fund established in section 8 of this 2011 Act.

34 **SECTION 16.** Sections 1 to 7 and 11 to 15 of this 2011 Act apply to tax years beginning  
 35 on or after January 1, 2012, and before January 1, 2022.

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