

A-Engrossed Senate Bill 968

Ordered by the Senate May 9
Including Senate Amendments dated May 9

Sponsored by Senators BURDICK, MORSE, HASS, THOMSEN, Representatives OLSON, READ; Senators NELSON, OLSEN

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.

Directs, **for biennia beginning on or after July 1, 2013**, Legislative Assembly to leave amount unappropriated for biennium if Legislative Assembly determines that percentage increase in available General Fund revenues is greater than increase in personal income growth. Sets amount left unappropriated at percentage difference between increase in revenues available for biennium and personal income growth, with [*three*] **two** percent maximum.

Specifies that if Legislative Assembly determines that percentage increase in available General Fund revenues is greater than amount of personal income growth plus amount left unappropriated, Legislative Assembly [*must leave one-half of excess unappropriated. Allows use of remaining excess for general governmental purposes*] **may appropriate specified amount for general government purposes.**

Requires deposit of [*certain*] unappropriated amounts in [*Oregon Rainy Day Fund*] **Emergency Reserve Fund established in Senate Joint Resolution 26 (2011)** if General Fund revenues collected equal or exceed revenue estimate for biennium. [*Allows Legislative Assembly to deposit other unappropriated amounts in Oregon Rainy Day Fund, to appropriate amounts to reduce state bond debt or to pay for capital construction or other nonrecurring expenses.*]

[*Declares emergency, effective on passage.*]

Implements Senate Joint Resolution 26 (2011) by changing statutory references to Oregon Rainy Day Fund to Emergency Reserve Fund. Repeals obsolete statutory provisions relating to Oregon Rainy Day Fund. Provides that surpluses of personal income tax revenues in excess of two percent of forecast revenues are equally deposited in Emergency Reserve Fund and returned to personal income taxpayers. Provides that surpluses of corporate excise or income tax revenues in excess of two percent be deposited in Emergency Reserve Fund.

Takes effect only if Senate Joint Resolution 26 is approved by people at next regular general election. Takes effect on effective date of constitutional amendment proposed in Senate Joint Resolution 26 (2011).

A BILL FOR AN ACT

1
2 Relating to state finance; creating new provisions; amending ORS 291.349, 293.146, 305.792, 317.853
3 and 318.074; repealing ORS 293.144 and 293.148; and prescribing an effective date.

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

5 **SECTION 1. (1) If required under subsection (2) of this section, in budgeting for a**
6 **biennium that begins on July 1 of the year of a regular legislative session held in an odd-**
7 **numbered year, the Legislative Assembly shall leave unappropriated an amount of General**
8 **Fund revenues estimated to be available for the biennium. The Legislative Assembly shall**
9 **use the estimate of General Fund revenues contained in the last quarterly economic and**
10 **revenue forecast presented prior to the end of the regular legislative session held in an**
11 **odd-numbered year.**

12 **(2)(a) Subject to paragraph (b) of this subsection, if the Legislative Assembly determines**
13 **that the growth index is greater than the personal income growth index, the amount to be**
14 **left unappropriated under subsection (1) of this section shall be a percentage of the General**

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 Fund revenues estimated to be available for the biennium that is equal to the growth index
2 percentage minus the personal income growth index percentage.

3 (b) The amount to be left unappropriated under this subsection may not exceed two
4 percent of the General Fund revenues appropriated for the preceding biennium.

5 (3) If the Legislative Assembly determines that the growth index is greater than the
6 personal income growth index plus the percentage amount left unappropriated under sub-
7 section (2) of this section, the Legislative Assembly may appropriate the amount by which
8 the growth index exceeds the personal income growth index plus the percentage amount left
9 unappropriated under subsection (2) of this section for general governmental purposes.

10 (4) As soon as practicable after the Legislative Assembly determines the ending balance
11 of the General Fund for a biennium, if the amount of General Fund revenues collected during
12 the biennium equals or exceeds the amount of the estimate used to determine any amount
13 left unappropriated for that biennium under subsection (2) of this section, any amount left
14 unappropriated under subsection (2) of this section shall be transferred to the Emergency
15 Reserve Fund established by section 15, Article IX of the Oregon Constitution.

16 (5) As used in this section:

17 (a) "Ending balance" means the difference between the amount of General Fund revenues
18 collected during a biennium and the amount of General Fund appropriations for the
19 biennium.

20 (b) "General Fund appropriations" means the amount of moneys appropriated from the
21 General Fund for a biennium in the legislatively approved budget for the biennium, minus
22 the amount of any General Fund appropriation balances for that biennium that revert to the
23 General Fund as provided by law.

24 (c) "General Fund revenues estimated to be available for the biennium" means:

25 (A) The amount of revenues contained in the General Fund at the beginning of the
26 biennium; and

27 (B) The amount of General Fund revenues estimated to be collected during the biennium.

28 (d) "Growth index" means the percentage difference between the General Fund revenues
29 estimated to be available for the biennium and the General Fund revenues appropriated for
30 the preceding biennium.

31 (e) "Legislatively adopted budget" means the budget enacted by the Legislative Assembly
32 during an odd-numbered year regular session.

33 (f) "Legislatively approved budget" means the legislatively adopted budget as modified by
34 the joint committee referred to in section 3, Article III of the Oregon Constitution, or by the
35 Legislative Assembly meeting in regular or special session.

36 (g) "Personal income growth index" means the percentage change in statewide personal
37 income in the two calendar years preceding the beginning of a biennium.

38 **SECTION 2.** ORS 291.349 is amended to read:

39 291.349. (1) As soon as practicable after adjournment sine die of the **odd-numbered year** regu-
40 lar session of the Legislative Assembly, the Oregon Department of Administrative Services shall
41 report to the Emergency Board the estimate as of July 1 of the first year of the biennium of General
42 Fund and State Lottery Fund revenues that will be received by the state during that biennium. The
43 Oregon Department of Administrative Services shall base its estimate on the last forecast given to
44 the Legislative Assembly before adjournment sine die of the **odd-numbered year** regular session
45 on which the printed, adopted budget prepared in the Oregon Department of Administrative Services

1 is based, adjusted only insofar as necessary to reflect changes in laws adopted at that session. The
 2 report shall contain the estimated revenues from corporate income and excise taxes separately from
 3 the estimated revenues from other General Fund sources. The Oregon Department of Administrative
 4 Services may revise the estimate if necessary following adjournment sine die of [*any special or*
 5 *emergency*] **an even-numbered year regular session or special** session of the Legislative Assembly
 6 but any revision does not affect the basis of the computation described in subsection (3) or (4) of this
 7 section.

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

13 (3) If the revenues received from the corporate income and excise taxes during the biennium
 14 exceed the amounts estimated to be received from such taxes for the biennium[, *as estimated after*
 15 *adjournment sine die of the regular session, by two percent or more,*] **by two percent or more, as**
 16 **estimated after adjournment sine die of an odd-numbered year regular session,** the total
 17 amount of that excess shall be [*credited to corporate income and excise taxpayers in a percentage*
 18 *amount of prior year corporate excise and income tax liability as determined under subsection (5) of*
 19 *this section. However, no credit shall be allowed against tax liability imposed by ORS 317.090*]
 20 **transferred to the Emergency Reserve Fund established by section 15, Article IX of the**
 21 **Oregon Constitution.**

22 (4) If the revenues received from General Fund revenue sources, exclusive of those described in
 23 subsection (3) of this section, during the biennium exceed the amounts estimated to be received from
 24 such sources for the biennium[, *as estimated after adjournment sine die of the regular session, by two*
 25 *percent or more, there shall be refunded from personal income tax revenues an amount equal to the*
 26 *total amount of that excess*] **by two percent or more, as estimated after adjournment sine die**
 27 **of an odd-numbered year regular session, one-half of the total amount of the excess shall be**
 28 **transferred to the Emergency Reserve Fund established by section 15, Article IX of the**
 29 **Oregon Constitution, and one-half of the total amount of the excess shall be returned to**
 30 **personal income taxpayers,** reduced by the cost certified by the Department of Revenue under
 31 ORS 291.351 as being allocable to payments described under this subsection. The excess amount to
 32 be refunded shall be paid to personal income taxpayers in a percentage amount of prior year per-
 33 sonal income tax liability as determined under subsection [(6)] (5) of this section.

34 [(5)(a) *If there is an excess to be credited under subsection (3) of this section, on or before October*
 35 *1, following the end of each biennium, the Oregon Department of Administrative Services shall deter-*
 36 *mine and certify to the Department of Revenue the percentage amount of credit for purposes of sub-*
 37 *section (3) of this section. The percentage amount determined shall be a percentage amount to the*
 38 *nearest one-tenth of a percent that will distribute the excess to be credited to corporate excise and in-*
 39 *come taxpayers.*]

40 [(b) *The percentage amount shall equal the amount distributed under subsection (3) of this section*
 41 *divided by the estimated total corporate income and excise tax liability for all corporate income and*
 42 *excise taxpayers for tax years beginning in the calendar year immediately preceding the calendar year*
 43 *in which the excess is determined.*]

44 [(c) *The amount of the surplus credit is determined by multiplying the percentage amount deter-*
 45 *mined under paragraph (b) of this subsection by the total amount of a corporate income or excise*

1 taxpayer's tax liability for the tax year beginning in the calendar year immediately preceding the cal-
 2 endar year in which the excess is determined in order to calculate the amount to be credited to the
 3 taxpayer.]

4 [(d) The credit shall be determined based on the tax liability as shown on the return of the taxpayer
 5 or as corrected by the Department of Revenue.]

6 [(e) The credit shall be computed after the allowance of a credit provided under ORS 316.082,
 7 316.131 or 316.292, but before the allowance of any other credit or offset against tax liability allowed
 8 or allowable under any provision of law of this state, and before the application of estimated tax pay-
 9 ments, withholding or other advance tax payments.]

10 [(f) If a credit applied against tax liability as described in paragraph (e) of this subsection reduces
 11 tax liability to zero and an amount of the credit remains unused, the remaining unused amount shall
 12 be carried forward and applied against tax liability as prescribed in paragraph (e) of this subsection
 13 in the succeeding tax year. Following application of the credit against tax liability in a succeeding tax
 14 year, any amount continuing to remain unused shall be carried forward and applied against tax li-
 15 ability in a succeeding tax year until all remaining amounts of unused credit are offset against tax li-
 16 ability.]

17 [(g) Notwithstanding paragraph (e) of this subsection, if an excess is credited under subsection (3)
 18 of this section for a tax year and an unused credit amount from a prior tax year is carried forward
 19 to the tax year as prescribed under paragraph (f) of this subsection, the amount of the carryforward
 20 credit shall be applied against tax liability prior to applying the new credit.]

21 [(h) The Department of Revenue may prescribe by rule the manner of calculating and claiming a
 22 credit if the filing status of a corporation changes between the tax year described in paragraph (b) of
 23 this subsection and the succeeding tax year.]

24 [(6)(a)] **(5)(a)** If there is an excess to be refunded to **personal income taxpayers** under sub-
 25 section (4) of this section, on or before September 15, following the end of each biennium, the
 26 Oregon Department of Administrative Services shall determine and certify to the Department of
 27 Revenue the percentage amount of refund payment for purposes of subsection (4) of this section. The
 28 percentage amount so determined shall be a percentage amount to the nearest one-hundredth of a
 29 percent that will distribute the excess to be refunded to personal income taxpayers under subsection
 30 (4) of this section. The percentage amount shall equal the amount distributed to **personal income**
 31 **taxpayers** under subsection (4) of this section divided by the estimated total personal income tax
 32 liability for all personal income taxpayers for tax years beginning in the calendar year immediately
 33 preceding the calendar year in which the excess is determined.

34 (b) The Department of Revenue shall multiply the percentage amount determined under para-
 35 graph (a) of this subsection by the total amount of a personal income taxpayer's tax liability for the
 36 tax year beginning in the calendar year immediately preceding the calendar year in which the ex-
 37 cess is determined in order to calculate the amount of the refund to be made to the taxpayer. For
 38 purposes of this paragraph, the taxpayer's tax liability is the amount as shown on the return of the
 39 taxpayer or as corrected by the Department of Revenue, and is determined:

40 (A) After the allowance of a credit provided under ORS 316.082, 316.131 or 316.292;

41 (B) Before the allowance of any other credit or offset against tax liability allowed or allowable
 42 on the return for the tax year; and

43 (C) Before the application of estimated tax payments, withholding or other advance tax pay-
 44 ments.

45 (c) The refund described under this subsection shall be mailed by the Department of Revenue

1 to personal income taxpayers eligible for the payment on or before December 15 following the end
2 of the biennium for which the payment described under this subsection is being made.

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

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

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

8 [(7)] (6) No refund shall be made to a taxpayer if, after making the calculation described under
9 subsection [(6)] (5) of this section, the amount calculated is less than \$1.

10 [(8)] (7) For purposes of ORS chapters 305 and 314 to 318, refunds issued under subsection [(6)]
11 (5) of this section are refunds of an overpayment of tax imposed under ORS chapter 316, but do not
12 bear interest.

13 **SECTION 3. If Senate Bill 754 becomes law, section 2 of this 2011 Act (amending ORS**
14 **291.349) is repealed.**

15 **SECTION 4.** ORS 293.146 is amended to read:

16 293.146. (1) As used in this section:

17 (a) "Ending balance" means the difference between the amount of General Fund revenues col-
18 lected during a biennium and the amount of General Fund appropriations for the biennium.

19 (b) "General Fund appropriations" means the amount of moneys appropriated from the General
20 Fund for a biennium in the legislatively approved budget for the biennium, minus the amount of any
21 General Fund appropriation balances for that biennium that revert to the General Fund under ORS
22 293.190.

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

24 (2) Except as provided in [ORS 293.148] **section 15 (5), Article IX of the Oregon**
25 **Constitution**, as soon as possible after the ending balance for a biennium is determined, an amount
26 equal to one percent of the amount of General Fund appropriations for that biennium shall be
27 transferred to the [Oregon Rainy Day Fund established by ORS 293.144] **Emergency Reserve Fund**
28 **established by section 15, Article IX of the Oregon Constitution**. If the ending balance does not
29 equal or exceed one percent of the amount of General Fund appropriations, an amount equal to the
30 ending balance shall be transferred to the [Oregon Rainy Day Fund] **Emergency Reserve Fund**.

31 **SECTION 5.** ORS 305.792 is amended to read:

32 305.792. (1) The Department of Revenue shall cause a checkoff box to be printed on the personal
33 income and corporate income or excise tax returns for the appropriate tax year, by which a tax-
34 payer may indicate that a surplus refund payment [or credit] that the taxpayer may otherwise be
35 entitled to under ORS 291.349 shall instead be used for funding education.

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

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

43 [(3)(a) A corporate excise or income taxpayer may elect to not claim a surplus refund credit that
44 the taxpayer would otherwise be entitled to pursuant to ORS 291.349, in order to achieve a corre-
45 sponding transfer of such moneys from the General Fund to the State School Fund for the support of

1 public elementary and secondary school education. The taxpayer may make the election by checking the
 2 appropriate checkoff box on the taxpayer's return and by not using the surplus refund credit percentage
 3 to reduce the taxpayer's tax liability.]

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

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

9 [(4)] (3) After the determination that surplus refund payments are to be made under ORS 291.349
 10 (4) and [(6)] (5), the department shall determine the total amount of such payments for which an
 11 election to donate to public elementary and secondary education has been made and shall certify
 12 this amount to the State Treasurer. Following the department's certification to the State Treasurer,
 13 an election to donate that biennium's surplus refund payments under subsection (2) of this section
 14 is irrevocable.

15 [(5) Following the determination to credit corporate income and excise taxes pursuant to ORS
 16 291.349 (3) and (5), the department shall annually certify the total amount of allowable credits that have
 17 not been claimed pursuant to an election made under subsection (3) of this section. The certification
 18 shall be made on or before December 31 of each year, until the tax year for which the credit would
 19 otherwise be claimed becomes a closed tax year.]

20 **SECTION 6.** ORS 317.853 is amended to read:

21 317.853. (1) For tax years beginning on or after January 1, 2013, any revenue that is received
 22 as a result of a rate of tax above six and six-tenths percent imposed under this chapter and that is
 23 in excess of the revenue that would be received under this chapter at a rate of six and six-tenths
 24 percent shall be deposited into the [Oregon Rainy Day Fund] **Emergency Reserve Fund** established
 25 by [ORS 293.144] **section 15, Article IX of the Oregon Constitution.**

26 (2) Before the end of each biennium, beginning with the biennium ending on June 30, 2015, the
 27 Department of Revenue shall estimate the revenue described in subsection (1) of this section that
 28 is received during the biennium. An amount equal to that estimate shall be transferred into the
 29 [Oregon Rainy Day Fund] **Emergency Reserve Fund** established by [ORS 293.144] **section 15,**
 30 **Article IX of the Oregon Constitution,** on or before June 30 of each odd-numbered year.

31 **SECTION 7.** ORS 318.074 is amended to read:

32 318.074. (1) For tax years beginning on or after January 1, 2013, any revenue that is received
 33 as a result of a rate of tax above six and six-tenths percent imposed under this chapter and that is
 34 in excess of the revenue that would be received under this chapter at a rate of six and six-tenths
 35 percent shall be deposited into the [Oregon Rainy Day Fund] **Emergency Reserve Fund** established
 36 by [ORS 293.144] **section 15, Article IX of the Oregon Constitution.**

37 (2) Before the end of each biennium, beginning with the biennium ending on June 30, 2015, the
 38 Department of Revenue shall estimate the revenue described in subsection (1) of this section that
 39 is received during the biennium. An amount equal to that estimate shall be transferred into the
 40 [Oregon Rainy Day Fund] **Emergency Reserve Fund** established by [ORS 293.144] **section 15,**
 41 **Article IX of the Oregon Constitution,** on or before June 30 of each odd-numbered year.

42 **SECTION 8.** Pursuant to section 15 (3), Article IX of the Oregon Constitution, once each
 43 month, the Oregon Department of Administrative Services shall calculate the amount of
 44 General Fund interest that is attributable to moneys in the Emergency Reserve Fund, ex-
 45 clusive of any subaccount in the Emergency Reserve Fund. Except as provided in section

1 15 (5), Article IX of the Oregon Constitution, the amount calculated under this section shall
2 be transferred to the Emergency Reserve Fund.

3 **SECTION 9.** (1) Section 1 of this 2011 Act applies to biennia beginning on or after July
4 1, 2013.

5 (2) Section 8 of this 2011 Act and the amendments to ORS 291.349, 293.146, 305.792, 317.853
6 and 318.074 by sections 2 and 4 to 7 of this 2011 Act and the repeal of ORS 293.144 and 293.148
7 by section 10 of this 2011 Act apply to biennia beginning on or after July 1, 2011.

8 **SECTION 10.** ORS 293.144 and 293.148 are repealed.

9 **SECTION 11.** The Emergency Reserve Fund established by section 15, Article IX of the
10 Oregon Constitution, is intended to be a continuation of the Oregon Rainy Day Fund estab-
11 lished by ORS 293.144. Moneys contained on the effective date of this 2011 Act in the Oregon
12 Rainy Day Fund established by ORS 293.144 are considered to be moneys in the Emergency
13 Reserve Fund established by section 15, Article IX of the Oregon Constitution.

14 **SECTION 12.** This 2011 Act does not become effective unless the amendment to the
15 Oregon Constitution proposed by Senate Joint Resolution 26 (2011) is approved by the people
16 at the regular general election held in November 2012. This 2011 Act takes effect on the ef-
17 fective date of that amendment.

18