

HB 3261-2
(LC 1804)
4/15/11 (DH/ps)

**PROPOSED AMENDMENTS TO
HOUSE BILL 3261**

1 On page 1 of the printed bill, line 2, delete “323.390 and” and insert
2 “320.080, 321.570, 323.390,”.

3 In line 3, after “323.610” insert “and 324.190”.

4 Delete lines 5 through 28 and delete pages 2 through 4 and insert:

5 **“SECTION 1.** ORS 314.430 is amended to read:

6 “314.430. (1) If any tax imposed under ORS chapter 118, 316, 317 or 318
7 or any portion of the tax is not paid within 30 days after the date that the
8 written notice and demand for payment required under ORS 305.895 is mailed
9 (or within five days after the tax becomes due, in the case of the termination
10 of the tax year by the Department of Revenue under the provisions of ORS
11 314.440) and no provision is made to secure the payment thereof by bond,
12 deposit or otherwise, pursuant to regulations promulgated by the department,
13 the department may issue a warrant [*directed to the sheriff of any county of*
14 *the state commanding the sheriff to levy upon and sell the real and personal*
15 *property of the taxpayer found within that county,*] for the payment of the
16 amount of the tax, with the added penalties, interest[,] **and any** collection
17 charge **incurred.** [*and the sheriff's cost of executing the warrant, and to re-*
18 *turn such warrant to the department and pay to it the money collected by vir-*
19 *tue thereof by a time to be therein specified, not less than 60 days from the*
20 *date of the warrant.*] A copy of the warrant shall be mailed or delivered to
21 the taxpayer by the department at the taxpayer's last-known address.

22 “[*(2) The sheriff shall, within five days after the receipt of the warrant,*

1 *record with the clerk of the county a copy thereof, and thereupon the clerk shall*
2 *enter in the County Clerk Lien Record the name of the taxpayer mentioned in*
3 *the warrant, and the amount of the tax or portion thereof and penalties for*
4 *which the warrant is issued and the date when such copy is recorded.*
5 *Thereupon the amount of the warrant so recorded shall become a lien upon the*
6 *title to and interest in property of the taxpayer against whom it is issued in*
7 *the same manner as a judgment duly recorded. The sheriff thereupon shall*
8 *proceed upon the same in all respects, with like effect and in the same manner*
9 *prescribed by law in respect to executions issued against property upon judg-*
10 *ment of a court of record, and shall be entitled to the same fees for services*
11 *in executing the warrant, to be added to and collected as a part of the warrant*
12 *liability.]*

13 **“(2) At any time after issuing a warrant under this section, the**
14 **department may record the warrant in the County Clerk Lien Record**
15 **of any county of this state. Recording of the warrant has the effect**
16 **described in ORS 205.125. After recording a warrant, the department**
17 **may direct the sheriff for the county in which the warrant is recorded**
18 **to levy upon and sell the real and personal property of the taxpayer**
19 **found within that county, and to levy upon any currency of the tax-**
20 **payer found within that county, for the application of the proceeds or**
21 **currency against the amount reflected in the warrant and the sheriff’s**
22 **cost of executing the warrant. The sheriff shall proceed on the warrant**
23 **in the same manner prescribed by law for executions issued against**
24 **property pursuant to a judgment, and is entitled to the same fees as**
25 **provided for executions issued against property pursuant to a judg-**
26 **ment. The fees of the sheriff shall be added to and collected as a part**
27 **of the warrant liability.**

28 **“(3) In the discretion of the department a warrant [of like terms, force and**
29 **effect may be issued and] under this section may be directed to any agent**
30 **authorized by the department to collect taxes, and in the execution**

1 [thereof] of the warrant the agent [shall have] has all of the powers con-
2 ferred by law upon sheriffs, but is entitled to no fee or compensation in ex-
3 cess of actual expenses paid in the performance of such duty.

4 “(4) [If] Until a warrant issued under this section is [returned not]
5 satisfied in full, the department [shall have] has the same remedies to en-
6 force the claim for taxes against the taxpayer as if [the people of] the state
7 had recovered judgment against the taxpayer for the amount of the tax[, and
8 shall balance the assessment record of the taxpayer by transferring the unpaid
9 deficiency to the taxpayer’s delinquent record].

10 “**SECTION 2.** ORS 320.080 is amended to read:

11 “320.080. (1) If any tax or penalty imposed by ORS 320.005 to 320.150 is
12 not paid as required by ORS 320.005 to 320.150 within 30 days after the date
13 that the written notice and demand for payment required under ORS 305.895
14 is mailed, the Department of Revenue shall issue a warrant [directed to the
15 sheriff of any county of the state commanding the sheriff to levy upon and sell
16 the real and personal property of the person or persons named in the warrant
17 and liable for the tax found within the county,] for the payment of the amount
18 [thereof] of the tax, with the added penalty and the cost of executing the
19 warrant[, and to return the warrant to the department and pay to it the money
20 collected by virtue thereof by a time to be therein specified not more than 30
21 days from the date of the warrant]. A copy of the warrant shall be mailed or
22 delivered to the taxpayer by the department at the taxpayer’s last-known
23 address.

24 “[2) The sheriff shall, within five days after the receipt of the warrant,
25 record with the clerk of the county a copy thereof. Thereupon the clerk shall
26 enter in the County Clerk Lien Record the names of the persons mentioned in
27 the warrant, and the amount of the tax and penalty for which the warrant is
28 issued and the date when such copy is recorded. Thereupon the amount of the
29 warrant so recorded shall become a lien upon the title to any interest in real
30 property or personal property of the persons against whom it is issued in the

1 same manner as a judgment that creates a judgment lien under ORS chapter
2 18. The sheriff shall thereupon proceed upon the same in all respects, with like
3 effect and in the manner prescribed by law in respect to execution issued
4 against property upon judgment of a court of record, and the sheriff is entitled
5 to the same fees for services in executing the warrant to be collected in the
6 same manner. If a warrant is returned not satisfied in full, the department
7 shall have the same remedies to enforce the claim for taxes as if the people of
8 the state had recovered judgment for the amount of the tax.]

9 “(2) At any time after issuing a warrant under this section, the
10 department may record the warrant in the County Clerk Lien Record
11 of any county of this state. Recording of the warrant has the effect
12 described in ORS 205.125. After recording a warrant, the department
13 may direct the sheriff for the county in which the warrant is recorded
14 to levy upon and sell the real and personal property of the taxpayer
15 found within that county, and to levy upon any currency of the tax-
16 payer found within that county, for the application of the proceeds or
17 currency against the amount reflected in the warrant and the sheriff’s
18 cost of executing the warrant. The sheriff shall proceed on the warrant
19 in the same manner prescribed by law for executions issued against
20 property pursuant to a judgment, and is entitled to the same fees as
21 provided for executions issued against property pursuant to a judg-
22 ment. The fees of the sheriff shall be added to and collected as a part
23 of the warrant liability.

24 “(3) In the discretion of the department a warrant under this sec-
25 tion may be directed to any agent authorized by the department to
26 collect taxes, and in the execution of the warrant the agent has all of
27 the powers conferred by law upon sheriffs, but is entitled to no fee or
28 compensation in excess of actual expenses paid in the performance of
29 such duty.

30 “(4) Until a warrant issued under this section is satisfied in full, the

1 department has the same remedies to enforce the claim for taxes
2 against the taxpayer as if the state had recovered judgment against
3 the taxpayer for the amount of the tax.

4 **“SECTION 3.** ORS 321.570 is amended to read:

5 “321.570. (1) If any tax imposed by ORS 321.005 to 321.185, 321.560 to
6 321.600 or 321.700 to 321.754, or any portion of the tax, is not paid within 30
7 days after the date that the written notice and demand for payment required
8 under ORS 305.895 is mailed, the Department of Revenue may issue a
9 warrant[, *directed to the sheriff of any county of the state, commanding the*
10 *sheriff to levy upon and sell the real and personal property of the taxpayer*
11 *owning the same, found within that county,*] for the payment of the amount
12 of the tax, with the added penalties, interest and cost of executing the
13 warrant[, *and to return the warrant to the department and to pay to it the*
14 *money collected from the sale, within 60 days after receipt of the warrant*]. A
15 copy of the warrant shall be mailed or delivered to the taxpayer by the de-
16 partment at the taxpayer’s last-known address.

17 “[*(2) The sheriff shall, within five days after the receipt of the warrant,*
18 *record a copy with the county clerk, and the clerk shall immediately enter in*
19 *the County Clerk Lien Record the name of the taxpayer mentioned in the*
20 *warrant, and the amount of the tax or portion of the tax and penalties for*
21 *which the warrant is issued and the date when the copy is recorded. The*
22 *amount of the warrant so recorded shall become a lien upon the title to and*
23 *interest in real property of the taxpayer against which it is issued, in the same*
24 *manner as a judgment that creates a judgment lien under ORS chapter 18.*
25 *The sheriff immediately shall proceed upon the warrant in all respects, with*
26 *like effect, and in the same manner prescribed by law in respect to executions*
27 *issued against property upon judgments of a court of record, and shall be en-*
28 *titled to the same fees for services in executing the warrant, to be added to and*
29 *collected as a part of the warrant liability.*]

30 **“(2) At any time after issuing a warrant under this section, the**

1 department may record the warrant in the County Clerk Lien Record
2 of any county of this state. Recording of the warrant has the effect
3 described in ORS 205.125. After recording a warrant, the department
4 may direct the sheriff for the county in which the warrant is recorded
5 to levy upon and sell the real and personal property of the taxpayer
6 found within that county, and to levy upon any currency of the tax-
7 payer found within that county, for the application of the proceeds or
8 currency against the amount reflected in the warrant and the sheriff's
9 cost of executing the warrant. The sheriff shall proceed on the warrant
10 in the same manner prescribed by law for executions issued against
11 property pursuant to a judgment, and is entitled to the same fees as
12 provided for executions issued against property pursuant to a judg-
13 ment. The fees of the sheriff shall be added to and collected as a part
14 of the warrant liability.

15 “(3) In the discretion of the department a warrant [*of like terms, force and*
16 *effect may be issued and*] **under this section may be** directed to any agent
17 authorized **by the department** to collect this tax. In the execution of the
18 warrant[, *such*] **the** agent has the powers conferred by law upon sheriffs, but
19 is entitled to no fee or compensation in excess of actual expenses paid in the
20 performance of such duty.

21 “(4) [*If*] **Until a warrant issued under this section** is [*returned not*]
22 satisfied in full, the department [*shall have*] **has** the same remedies to en-
23 force the claim for taxes against the taxpayer as if the state had [*a*
24 *recorded*] **recovered** judgment against the taxpayer for the amount of the
25 tax.

26 “**SECTION 4.** ORS 323.390 is amended to read:

27 “323.390. (1) If any tax imposed by ORS 323.005 to 323.482 or any portion
28 of such tax is not paid within 30 days after notice of a deficiency determi-
29 nation is given pursuant to ORS 323.403 or of a tax determined under ORS
30 323.385, and no provision is made to secure the payment thereof by bond,

1 deposit or otherwise, pursuant to regulations promulgated by the Department
2 of Revenue, the department shall:

3 “(a) Assess a collection charge of \$5 if the sum of the tax, penalty and
4 interest then due exceeds \$10.

5 “(b) Issue a warrant [*directed to the sheriff of any county of the state*
6 *commanding the sheriff to levy upon and sell the real and personal property*
7 *of the taxpayer found within that county,*] for the payment of the amount of
8 the tax, with the added penalties, interest, collection charge and the sheriff's
9 cost of executing the warrant[, *and to return such warrant to the department*
10 *and pay to it the money collected by virtue thereof by a time to be therein*
11 *specified, not less than 60 days from the date of the warrant*]. **A copy of the**
12 **warrant shall be mailed or delivered to the taxpayer by the department**
13 **at the taxpayer's last-known address.**

14 “[*(2) The sheriff shall, within five days after the receipt of the warrant,*
15 *record with the clerk of the county a copy thereof, and thereupon the clerk shall*
16 *enter in the County Clerk Lien Record the name of the taxpayer mentioned in*
17 *the warrant, and the amount of the tax or portion thereof and penalties and*
18 *interest for which the warrant is issued and the date when such copy is re-*
19 *corded. Thereupon the amount of the warrant so recorded shall become a lien*
20 *upon the title to and interest in property of the taxpayer against whom it is*
21 *issued in the same manner as a judgment that creates a judgment lien under*
22 *ORS chapter 18. The sheriff thereupon shall proceed upon the same in all re-*
23 *spects, with like effect and in the same manner prescribed by law in respect*
24 *to executions issued against property upon judgment of a court of record, and*
25 *shall be entitled to the same fees for services in executing the warrant, to be*
26 *added to and collected as a part of the warrant liability.*]

27 **“(2) At any time after issuing a warrant under this section, the**
28 **department may record the warrant in the County Clerk Lien Record**
29 **of any county of this state. Recording of the warrant has the effect**
30 **described in ORS 205.125. After recording a warrant, the department**

1 may direct the sheriff for the county in which the warrant is recorded
2 to levy upon and sell the real and personal property of the taxpayer
3 found within that county, and to levy upon any currency of the tax-
4 payer found within that county, for the application of the proceeds or
5 currency against the amount reflected in the warrant and the sheriff's
6 cost of executing the warrant. The sheriff shall proceed on the warrant
7 in the same manner prescribed by law for executions issued against
8 property pursuant to a judgment, and is entitled to the same fees as
9 provided for executions issued against property pursuant to a judg-
10 ment. The fees of the sheriff shall be added to and collected as a part
11 of the warrant liability.

12 “(3) In the discretion of the department a warrant [*of like terms, force and*
13 *effect may be issued and*] **under this section may be** directed to any agent
14 authorized **by the department** to collect income taxes, and in the execution
15 [*thereof*] **of the warrant** the agent [*shall have*] **has** all of the powers con-
16 ferred by law upon sheriffs, but is entitled to no fee or compensation in ex-
17 cess of actual expenses paid in the performance of such duty.

18 “(4) [*If*] **Until** a warrant **issued under this section** is [*returned not*]
19 satisfied in full, the department [*shall have*] **has** the same remedies to en-
20 force the claim for taxes against the taxpayer as if [*the people of*] the state
21 had recovered judgment against the taxpayer for the amount of the tax.

22 **“SECTION 5.** ORS 323.610 is amended to read:

23 “323.610. (1) If any tax imposed under ORS 323.500 to 323.645, or any
24 portion of the tax, is not paid within the time provided by law and no pro-
25 vision is made to secure the payment of the tax by bond, deposit or other-
26 wise, pursuant to rules adopted by the Department of Revenue, the
27 department may issue a warrant [*directed to the sheriff of any county of the*
28 *state commanding the sheriff to levy upon and sell the real and personal*
29 *property of the taxpayer found within the county,*] for the payment of the
30 amount of the tax, with the added penalties, interest and the sheriff's cost

1 of executing the warrant[, and to return the warrant to the department and
2 pay to it the money collected from the sale, within 60 days after the date of
3 receipt of the warrant]. **A copy of the warrant shall be mailed or deliv-**
4 **ered to the taxpayer by the department at the taxpayer's last-known**
5 **address.**

6 “(2) *The sheriff shall, within five days after the receipt of the warrant,*
7 *record with the clerk of the county a copy of the warrant, and the clerk shall*
8 *immediately enter in the County Clerk Lien Record the name of the taxpayer*
9 *mentioned in the warrant, the amount of the tax or portion of the tax and*
10 *penalties for which the warrant is issued and the date the copy is recorded.*
11 *The amount of the warrant so recorded shall become a lien upon the title to*
12 *and interest in real property of the taxpayer against whom it is issued in the*
13 *same manner as a judgment that creates a judgment lien under ORS chapter*
14 *18. The sheriff immediately shall proceed upon the warrant in all respects,*
15 *with like effect and in the same manner prescribed by law in respect to exe-*
16 *cutions issued against property upon judgment of a court of record, and shall*
17 *be entitled to the same fees for services in executing the warrant, to be added*
18 *to and collected as a part of the warrant liability.]*

19 “(2) **At any time after issuing a warrant under this section, the**
20 **department may record the warrant in the County Clerk Lien Record**
21 **of any county of this state. Recording of the warrant has the effect**
22 **described in ORS 205.125. After recording a warrant, the department**
23 **may direct the sheriff for the county in which the warrant is recorded**
24 **to levy upon and sell the real and personal property of the taxpayer**
25 **found within that county, and to levy upon any currency of the tax-**
26 **payer found within that county, for the application of the proceeds or**
27 **currency against the amount reflected in the warrant and the sheriff's**
28 **cost of executing the warrant. The sheriff shall proceed on the warrant**
29 **in the same manner prescribed by law for executions issued against**
30 **property pursuant to a judgment, and is entitled to the same fees as**

1 provided for executions issued against property pursuant to a judg-
2 ment. The fees of the sheriff shall be added to and collected as a part
3 of the warrant liability.

4 “(3) In the discretion of the department a warrant [*of like terms, force and*
5 *effect*] **under this section** may be [*issued and*] directed to any agent au-
6 thorized **by the department** to collect the taxes imposed by ORS 323.500 to
7 323.645. In the execution of the warrant[,] the agent [*shall have*] **has all of**
8 the powers conferred by law upon sheriffs, but is entitled to no fee or com-
9 pensation in excess of actual expenses paid in the performance of such duty.

10 “(4) [*If*] **Until a warrant issued under this section** is [*returned not*]
11 satisfied in full, the department [*shall have*] **has** the same remedies to en-
12 force the claim for taxes against the taxpayer as if [*the people of*] the state
13 had recovered judgment against the taxpayer for the amount of the tax.

14 **“SECTION 6.** ORS 324.190 is amended to read:

15 “324.190. (1) If any tax imposed by this chapter, or any portion of such
16 tax, is not paid within 30 days after the date that the written notice and
17 demand for payment required under ORS 305.895 is mailed, the Department
18 of Revenue shall issue a warrant[, *directed to the sheriff of any county of the*
19 *state, commanding the sheriff to levy upon and sell the real and personal*
20 *property of the person owing the tax, found within that county, for the payment*
21 *in the amount thereof*] **for the payment of the amount of the tax**, with the
22 added penalties, interest and cost of executing the warrant[, *and to return*
23 *the warrant to the department and to pay to it the money collected by virtue*
24 *thereof, within 60 days after receipt of the warrant*]. A copy of the warrant
25 shall be mailed or delivered to the taxpayer by the department at the
26 taxpayer’s last-known address.

27 “[*(2) The sheriff shall, within five days after the receipt of the warrant,*
28 *record a copy with the county clerk, and thereupon the clerk shall enter in the*
29 *County Clerk Lien Record the name of the person mentioned in the warrant,*
30 *and the amount of the tax or portion thereof and penalties for which the war-*

1 rant is issued and the date when the copy is recorded. Thereupon the amount
2 of the warrant so recorded shall become a lien upon the title to and interest
3 in real property of the person against which it is issued, in the same manner
4 as a judgment that creates a judgment lien under ORS chapter 18. The sheriff
5 thereupon shall proceed upon the warrant in all respects, with like effect, and
6 in the same manner prescribed by law in respect to executions issued against
7 property upon judgments of a court of records, and shall be entitled to the
8 same fees for services in executing the warrant, to be added to and collected
9 as a part of the warrant liability.]

10 **“(2) At any time after issuing a warrant under this section, the**
11 **department may record the warrant in the County Clerk Lien Record**
12 **of any county of this state. Recording of the warrant has the effect**
13 **described in ORS 205.125. After recording a warrant, the department**
14 **may direct the sheriff for the county in which the warrant is recorded**
15 **to levy upon and sell the real and personal property of the taxpayer**
16 **found within that county, and to levy upon any currency of the tax-**
17 **payer found within that county, for the application of the proceeds or**
18 **currency against the amount reflected in the warrant and the sheriff’s**
19 **cost of executing the warrant. The sheriff shall proceed on the warrant**
20 **in the same manner prescribed by law for executions issued against**
21 **property pursuant to a judgment, and is entitled to the same fees as**
22 **provided for executions issued against property pursuant to a judg-**
23 **ment. The fees of the sheriff shall be added to and collected as a part**
24 **of the warrant liability.**

25 **“(3) In the discretion of the department a warrant [of like terms, force and**
26 **effect may be issued and] under this section may be directed to any agent**
27 **[of the department] authorized by [it] the department to collect this tax. In**
28 **the execution of the warrant[, such] the agent has the powers conferred by**
29 **law upon sheriffs, but is entitled to no fee or compensation in excess of ac-**
30 **tual expenses paid in the performance of such duty.**

1 “(4) *[If]* **Until** a warrant **under this section** is *[returned not]* satisfied in
2 full, the department *[shall have]* **has** the same remedies to enforce the claim
3 for taxes against the *[owner]* **taxpayer** as if the state had a recorded judg-
4 ment against the *[owner]* **taxpayer** for the amount of the tax.

5 “**SECTION 7.** ORS 305.895 is amended to read:

6 “305.895. (1) Except as provided in ORS 314.440 or other jeopardy assess-
7 ment procedure, the Department of Revenue shall take no action against a
8 taxpayer’s real or personal property before issuing a warrant for the col-
9 lection of the tax as provided in ORS 314.430, 320.080, 321.570, **323.390,**
10 **323.610** and 324.190.

11 “(2) *[Prior to]* **At least 30 days before** issuing a warrant for collection
12 of any tax collected by the department, the department shall send the tax-
13 payer a written notice and demand for payment. The notice shall:

14 “(a) Be sent by mail, addressed to the taxpayer at the taxpayer’s last-
15 known address.

16 “(b) Inform the taxpayer that, **even if the taxpayer is compliant with**
17 **an installment agreement between the taxpayer and the department**
18 **and is in communication with the department,** if the tax or any portion
19 of the tax is not paid within 30 days after the date of the notice and demand
20 for payment, a warrant may be issued and recorded as provided in ORS
21 314.430, 320.080, 321.570, **323.390, 323.610** and 324.190.

22 “(c) Describe in clear nontechnical terms the legal authority for the
23 warrant.

24 “(d) Contain the name, office mailing address and office telephone number
25 of the person issuing the warrant and advise the taxpayer that questions or
26 complaints concerning the warrant, other than liability for the underlying
27 tax, may be directed to that person.

28 “(e) Include alternatives available to the taxpayer which would prevent
29 issuance of the warrant.

30 “(f) **Inform the taxpayer of possible consequences to the taxpayer**

1 of noncompliance, and of issuance of a warrant, including
2 garnishment of wages or bank accounts and seizure and sale of real
3 or personal property.

4 **SECTION 8.** The amendments to ORS 305.895, 314.430, 320.080,
5 321.570, 323.390, 323.610 and 324.190 by sections 1 to 7 of this 2011 Act
6 apply to warrants issued by the Department of Revenue on or after
7 January 1, 2012.

8 **SECTION 9.** This 2011 Act takes effect on the 91st day after the
9 date on which the 2011 regular session of the Seventy-sixth Legislative
10 Assembly adjourns sine die.”.

11

