

**PROPOSED AMENDMENTS TO  
SENATE BILL 968**

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the  
2 line and line 3 and insert “291.349, 305.792, 317.853 and 318.074; repealing  
3 ORS 293.144, 293.146 and 293.148; and prescribing an effective date.”.

4 Delete lines 5 through 24 and delete pages 2 and 3 and insert:

5 **“SECTION 1. (1) If required under subsection (2) or (3) of this sec-**  
6 **tion, in budgeting for a biennium that begins on July 1 of the year of**  
7 **a regular legislative session held in an odd-numbered year, the Legis-**  
8 **lative Assembly shall leave unappropriated an amount of General Fund**  
9 **revenues estimated to be available for the biennium. The Legislative**  
10 **Assembly shall use the estimate of General Fund revenues contained**  
11 **in the last quarterly economic and revenue forecast presented prior**  
12 **to the end of the regular legislative session held in an odd-numbered**  
13 **year.**

14 **“(2)(a) Subject to paragraph (b) of this subsection, if the Legislative**  
15 **Assembly determines that the growth index is greater than the per-**  
16 **sonal income growth index, the amount to be left unappropriated un-**  
17 **der subsection (1) of this section shall be a percentage of the General**  
18 **Fund revenues estimated to be available for the biennium that is equal**  
19 **to the growth index percentage minus the personal income growth**  
20 **index percentage.**

21 **“(b) The amount to be left unappropriated under this subsection**  
22 **may not exceed three percent of the General Fund revenues appropri-**

1 ated for the preceding biennium.

2 “(3) If the Legislative Assembly determines that the growth index  
3 is greater than the personal income growth index plus the percentage  
4 amount left unappropriated under subsection (2) of this section, the  
5 Legislative Assembly shall leave unappropriated a percentage of Gen-  
6 eral Fund revenues estimated to be available for the biennium that is  
7 equal to one-half of the amount by which the growth index exceeds the  
8 personal income growth index plus the percentage amount left unap-  
9 propriated under subsection (2) of this section. The Legislative As-  
10 sembly may appropriate the remaining one-half of the amount for  
11 general governmental purposes.

12 “(4) As soon as practicable after the Legislative Assembly deter-  
13 mines the ending balance of the General Fund for a biennium, if the  
14 amount of General Fund revenues collected during the biennium  
15 equals or exceeds the amount of the estimate used to determine any  
16 amounts left unappropriated for that biennium under subsection (2)  
17 or (3) of this section:

18 “(a) Any amounts left unappropriated under subsection (2) of this  
19 section shall be transferred to the Emergency Reserve Fund estab-  
20 lished by section 15, Article IX of the Oregon Constitution; and

21 “(b) Any amounts left unappropriated under subsection (3) of this  
22 section may be:

23 “(A) Transferred to the Emergency Reserve Fund;

24 “(B) Appropriated by the Legislative Assembly to pay or extinguish  
25 state bond debt or other state debt authorized by law to be incurred;

26 “(C) Appropriated by the Legislative Assembly to be used for capital  
27 construction projects; or

28 “(D) Appropriated by the Legislative Assembly to be used for other  
29 nonrecurring expenses of the state.

30 “(5) As used in this section:

1       “(a) ‘Ending balance’ means the difference between the amount of  
2       General Fund revenues collected during a biennium and the amount  
3       of General Fund appropriations for the biennium.

4       “(b) ‘General Fund appropriations’ means the amount of moneys  
5       appropriated from the General Fund for a biennium in the legislatively  
6       approved budget for the biennium, minus the amount of any General  
7       Fund appropriation balances for that biennium that revert to the  
8       General Fund as provided by law.

9       “(c) ‘General Fund revenues estimated to be available for the  
10       biennium’ means:

11       “(A) The amount of revenues contained in the General Fund at the  
12       beginning of the biennium; and

13       “(B) The amount of General Fund revenues estimated to be col-  
14       lected during the biennium.

15       “(d) ‘Growth index’ means the percentage difference between the  
16       General Fund revenues estimated to be available for the biennium and  
17       the General Fund revenues appropriated for the preceding biennium.

18       “(e) ‘Legislatively adopted budget’ means the budget enacted by the  
19       Legislative Assembly during an odd-numbered year regular session.

20       “(f) ‘Legislatively approved budget’ means the legislatively adopted  
21       budget as modified by the joint committee referred to in section 3,  
22       Article III of the Oregon Constitution, or by the Legislative Assembly  
23       meeting in regular or special session.

24       “(g) ‘Personal income growth index’ means the percentage change  
25       in statewide personal income in the two calendar years preceding the  
26       beginning of a biennium.

27       “SECTION 2. ORS 291.349 is amended to read:

28       “291.349. (1) As soon as practicable after adjournment sine die of the  
29       **odd-numbered year** regular session of the Legislative Assembly, the Oregon  
30       Department of Administrative Services shall report to the Emergency Board

1 the estimate as of July 1 of the first year of the biennium of General Fund  
2 and State Lottery Fund revenues that will be received by the state during  
3 that biennium. The Oregon Department of Administrative Services shall  
4 base its estimate on the last forecast given to the Legislative Assembly be-  
5 fore adjournment sine die of the **odd-numbered year** regular session on  
6 which the printed, adopted budget prepared in the Oregon Department of  
7 Administrative Services is based, adjusted only insofar as necessary to re-  
8 flect changes in laws adopted at that session. The report shall contain the  
9 estimated revenues from corporate income and excise taxes separately from  
10 the estimated revenues from other General Fund sources. The Oregon De-  
11 partment of Administrative Services may revise the estimate if necessary  
12 following adjournment sine die of [*any special or emergency*] **an even-**  
13 **numbered year regular session or special** session of the Legislative As-  
14 sembly but any revision does not affect the basis of the computation  
15 described in subsection (3) or (4) of this section.

16 “(2) As soon as practicable after the end of the biennium, the Oregon  
17 Department of Administrative Services shall report to the Emergency Board,  
18 or the Legislative Assembly if it is in session, the amount of General Fund  
19 revenues collected as of the last June 30 of the preceding biennium. The re-  
20 port shall contain the collections from corporate income and excise taxes  
21 separately from collections from other sources.

22 “(3) If the revenues received from the corporate income and excise taxes  
23 during the biennium exceed the amounts estimated to be received from such  
24 taxes for the biennium[, *as estimated after adjournment sine die of the regular*  
25 *session, by two percent or more,*] **by two percent or more, as estimated**  
26 **after adjournment sine die of an odd-numbered year regular session,**  
27 the total amount of that excess shall be [*credited to corporate income and*  
28 *excise taxpayers in a percentage amount of prior year corporate excise and in-*  
29 *come tax liability as determined under subsection (5) of this section. However,*  
30 *no credit shall be allowed against tax liability imposed by ORS 317.090*]

1 **transferred to the Emergency Reserve Fund established by section 15,**  
2 **Article IX of the Oregon Constitution.**

3 “(4) If the revenues received from General Fund revenue sources, exclu-  
4 sive of those described in subsection (3) of this section, during the biennium  
5 exceed the amounts estimated to be received from such sources for the  
6 biennium[, *as estimated after adjournment sine die of the regular session, by*  
7 *two percent or more, there shall be refunded from personal income tax revenues*  
8 *an amount equal to the total amount of that excess]* **by two percent or more,**  
9 **as estimated after adjournment sine die of an odd-numbered year**  
10 **regular session, one-half of the total amount of the excess shall be**  
11 **transferred to the Emergency Reserve Fund established by section 15,**  
12 **Article IX of the Oregon Constitution, and one-half of the total**  
13 **amount of the excess shall be returned to personal income taxpayers,**  
14 reduced by the cost certified by the Department of Revenue under ORS  
15 291.351 as being allocable to payments described under this subsection. The  
16 excess amount to be refunded shall be paid to personal income taxpayers in  
17 a percentage amount of prior year personal income tax liability as deter-  
18 mined under subsection [(6)] **(5)** of this section.

19 “[*(5)(a) If there is an excess to be credited under subsection (3) of this*  
20 *section, on or before October 1, following the end of each biennium, the Oregon*  
21 *Department of Administrative Services shall determine and certify to the De-*  
22 *partment of Revenue the percentage amount of credit for purposes of subsection*  
23 *(3) of this section. The percentage amount determined shall be a percentage*  
24 *amount to the nearest one-tenth of a percent that will distribute the excess to*  
25 *be credited to corporate excise and income taxpayers.]*

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

1       “(c) *The amount of the surplus credit is determined by multiplying the*  
2 *percentage amount determined under paragraph (b) of this subsection by the*  
3 *total amount of a corporate income or excise taxpayer’s tax liability for the tax*  
4 *year beginning in the calendar year immediately preceding the calendar year*  
5 *in which the excess is determined in order to calculate the amount to be*  
6 *credited to the taxpayer.]*

7       “(d) *The credit shall be determined based on the tax liability as shown on*  
8 *the return of the taxpayer or as corrected by the Department of Revenue.]*

9       “(e) *The credit shall be computed after the allowance of a credit provided*  
10 *under ORS 316.082, 316.131 or 316.292, but before the allowance of any other*  
11 *credit or offset against tax liability allowed or allowable under any provision*  
12 *of law of this state, and before the application of estimated tax payments,*  
13 *withholding or other advance tax payments.]*

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

23       “(g) *Notwithstanding paragraph (e) of this subsection, if an excess is*  
24 *credited under subsection (3) of this section for a tax year and an unused*  
25 *credit amount from a prior tax year is carried forward to the tax year as pre-*  
26 *scribed under paragraph (f) of this subsection, the amount of the carryforward*  
27 *credit shall be applied against tax liability prior to applying the new credit.]*

28       “(h) *The Department of Revenue may prescribe by rule the manner of cal-*  
29 *culating and claiming a credit if the filing status of a corporation changes*  
30 *between the tax year described in paragraph (b) of this subsection and the*

1 *succeeding tax year.]*

2 “[~~(6)(a)~~] **(5)(a)** If there is an excess to be refunded **to personal income**  
3 **taxpayers** under subsection (4) of this section, on or before September 15,  
4 following the end of each biennium, the Oregon Department of Administra-  
5 tive Services shall determine and certify to the Department of Revenue the  
6 percentage amount of refund payment for purposes of subsection (4) of this  
7 section. The percentage amount so determined shall be a percentage amount  
8 to the nearest one-hundredth of a percent that will distribute the excess to  
9 be refunded to personal income taxpayers under subsection (4) of this section.  
10 The percentage amount shall equal the amount distributed **to personal in-**  
11 **come taxpayers** under subsection (4) of this section divided by the estimated  
12 total personal income tax liability for all personal income taxpayers for tax  
13 years beginning in the calendar year immediately preceding the calendar  
14 year in which the excess is determined.

15 “(b) The Department of Revenue shall multiply the percentage amount  
16 determined under paragraph (a) of this subsection by the total amount of a  
17 personal income taxpayer’s tax liability for the tax year beginning in the  
18 calendar year immediately preceding the calendar year in which the excess  
19 is determined in order to calculate the amount of the refund to be made to  
20 the taxpayer. For purposes of this paragraph, the taxpayer’s tax liability is  
21 the amount as shown on the return of the taxpayer or as corrected by the  
22 Department of Revenue, and is determined:

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

25 “(B) Before the allowance of any other credit or offset against tax liabil-  
26 ity allowed or allowable on the return for the tax year; and

27 “(C) Before the application of estimated tax payments, withholding or  
28 other advance tax payments.

29 “(c) The refund described under this subsection shall be mailed by the  
30 Department of Revenue to personal income taxpayers eligible for the pay-

1 ment on or before December 15 following the end of the biennium for which  
2 the payment described under this subsection is being made.

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

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

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

11 “[7] (6) No refund shall be made to a taxpayer if, after making the cal-  
12 culation described under subsection [(6)] (5) of this section, the amount cal-  
13 culated is less than \$1.

14 “[8] (7) For purposes of ORS chapters 305 and 314 to 318, refunds issued  
15 under subsection [(6)] (5) of this section are refunds of an overpayment of  
16 tax imposed under ORS chapter 316, but do not bear interest.

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

19 **“SECTION 4. ORS 305.792 is amended to read:**

20 “305.792. (1) The Department of Revenue shall cause a checkoff box to be  
21 printed on the personal income and corporate income or excise tax returns  
22 for the appropriate tax year, by which a taxpayer may indicate that a surplus  
23 refund payment [*or credit*] that the taxpayer may otherwise be entitled to  
24 under ORS 291.349 shall instead be used for funding education.

25 “(2)(a) A personal income taxpayer may elect to donate a surplus refund  
26 payment to be made under ORS 291.349 to public elementary and secondary  
27 school education. The taxpayer may make the election by checking the ap-  
28 propriate checkoff box on the taxpayer’s return indicating the taxpayer’s  
29 intention to donate the surplus refund payment to public elementary and  
30 secondary education.

1 “(b) Once made, the election is irrevocable for any surplus refund pay-  
2 ments received until a subsequent return is filed for a later tax year, and  
3 on which the checkoff box is not checked.

4 “[*(3)(a)* A corporate excise or income taxpayer may elect to not claim a  
5 surplus refund credit that the taxpayer would otherwise be entitled to pursuant  
6 to ORS 291.349, in order to achieve a corresponding transfer of such moneys  
7 from the General Fund to the State School Fund for the support of public el-  
8 ementary and secondary school education. The taxpayer may make the election  
9 by checking the appropriate checkoff box on the taxpayer’s return and by not  
10 using the surplus refund credit percentage to reduce the taxpayer’s tax liabil-  
11 ity.]

12 “[*(b)* A taxpayer that checks the appropriate checkoff box indicating that  
13 the credit will not be claimed but that nevertheless claims the credit in deter-  
14 mining the taxpayer’s tax liability shall be considered to have not made the  
15 election under this subsection.]

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

18 “[*(4)*] **(3)** After the determination that surplus refund payments are to be  
19 made under ORS 291.349 (4) and [*(6)*] **(5)**, the department shall determine the  
20 total amount of such payments for which an election to donate to public el-  
21 ementary and secondary education has been made and shall certify this  
22 amount to the State Treasurer. Following the department’s certification to  
23 the State Treasurer, an election to donate that

24 biennium’s surplus refund payments under subsection (2)  
25 of this section is irrevocable.

26 “[*(5)* Following the determination to credit corporate income and excise  
27 taxes pursuant to ORS 291.349 (3) and (5), the department shall annually cer-  
28 tify the total amount of allowable credits that have not been claimed pursuant  
29 to an election made under subsection (3) of this section. The certification shall  
30 be made on or before December 31 of each year, until the tax year for which

1 *the credit would otherwise be claimed becomes a closed tax year.]*

2 **“SECTION 5.** ORS 317.853 is amended to read:

3 “317.853. (1) For tax years beginning on or after January 1, 2013, any  
4 revenue that is received as a result of a rate of tax above six and six-tenths  
5 percent imposed under this chapter and that is in excess of the revenue that  
6 would be received under this chapter at a rate of six and six-tenths percent  
7 shall be deposited into the [*Oregon Rainy Day Fund*] **Emergency Reserve**  
8 **Fund** established by [*ORS 293.144*] **section 15, Article IX of the Oregon**  
9 **Constitution.**

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

17 **“SECTION 6.** ORS 318.074 is amended to read:

18 “318.074. (1) For tax years beginning on or after January 1, 2013, any  
19 revenue that is received as a result of a rate of tax above six and six-tenths  
20 percent imposed under this chapter and that is in excess of the revenue that  
21 would be received under this chapter at a rate of six and six-tenths percent  
22 shall be deposited into the [*Oregon Rainy Day Fund*] **Emergency Reserve**  
23 **Fund** established by [*ORS 293.144*] **section 15, Article IX of the Oregon**  
24 **Constitution.**

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

1 odd-numbered year.

2 **“SECTION 7. Pursuant to section 15 (3), Article IX of the Oregon**  
3 **Constitution, once each month, the Oregon Department of Adminis-**  
4 **trative Services shall calculate the amount of General Fund interest**  
5 **that is attributable to moneys in the Emergency Reserve Fund, ex-**  
6 **clusive of any subaccount in the Emergency Reserve Fund. Except**  
7 **as provided in section 15 (6), Article IX of the Oregon Constitution, the**  
8 **amount calculated under this subsection shall be transferred to the**  
9 **Emergency Reserve Fund.**

10 **“SECTION 8. (1) Section 1 of this 2011 Act applies to biennia be-**  
11 **ginning on or after July 1, 2013.**

12 **“(2) Section 7 of this 2011 Act and the amendments to 291.349,**  
13 **305.792, 317.853 and 318.074 by sections 2, 4, 5 and 6 of this 2011 Act and**  
14 **the repeal of ORS 293.144, 293.146 and 293.148 by section 9 of this 2011**  
15 **Act apply to biennia beginning on or after July 1, 2011.**

16 **“SECTION 9. ORS 293.144, 293.146 and 293.148 are repealed.**

17 **“SECTION 10. The Emergency Reserve Fund established by section**  
18 **15, Article IX of the Oregon Constitution, is intended to be a contin-**  
19 **uation of the Oregon Rainy Day Fund established by ORS 293.144.**  
20 **Moneys contained on the effective date of this 2011 Act in the Oregon**  
21 **Rainy Day Fund established by ORS 293.144 are considered to be mon-**  
22 **eys in the Emergency Reserve Fund established by section 15, Article**  
23 **IX of the Oregon Constitution.**

24 **“SECTION 11. This 2011 Act does not become effective unless the**  
25 **amendment to the Oregon Constitution proposed by Senate Joint Re-**  
26 **solution 26 (2011) is approved by the people at the regular general**  
27 **election held in November 2012. This 2011 Act takes effect on the ef-**  
28 **fective date of that amendment.”.**

29