

House Bill 4040

Sponsored by Representatives READ, BERGER, Senators DEVLIN, TELFER; Representatives BARNHART, BENTZ, BREWER, BUCKLEY, CONGER, DEMBROW, DOHERTY, FREDERICK, GELSER, HARKER, HOLVEY, HOYLE, HUFFMAN, HUNT, KENNEMER, KENY-GUYER, KOMP, KOTEK, MATTHEWS, NATHANSON, ROBLAN, J SMITH, WEIDNER, WHISNANT, WITT, Senators BATES, BEYER, HASS, JOHNSON, MORSE, NELSON, PROZANSKI, ROSENBAUM, STEINER HAYWARD (Presession 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**.

Establishes Oregon Growth Fund and Oregon Growth Board to encourage investment in and availability of capital to Oregon businesses and to further economic development in Oregon.

Abolishes Oregon Growth Account and Oregon Growth Account Board on June 30, 2013.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to investment for economic development; creating new provisions; amending ORS 192.502,
3 284.701, 284.706, 293.731, 293.733, 293.761 and 293.796; repealing ORS 348.701, 348.702, 348.703,
4 348.704, 348.706, 348.707 and 348.710 and section 7, chapter 805, Oregon Laws 2009; appropriat-
5 ing money; and declaring an emergency.

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

OREGON GROWTH BOARD AND OREGON GROWTH FUND

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11 **SECTION 1. As used in sections 1 to 7 of this 2012 Act, unless the context requires oth-**
12 **erwise:**

13 (1) **“Business” means a corporation, partnership, proprietorship, firm, enterprise, joint**
14 **venture, cooperative, franchise, association, organization, self-employed individual, group of**
15 **individuals, nonprofit entity or other entity that is or will be operating or doing business in**
16 **Oregon.**

17 (2) **“Economic development” means development that:**

18 (a) **Relates to and supports the economic development policies for this state set forth in,**
19 **or adopted in furtherance of, ORS 285A.020;**

20 (b) **Promotes, expands or prevents the decline of businesses located or to be located in**
21 **Oregon;**

22 (c) **Creates jobs or prevents the loss of jobs; or**

23 (d) **Promotes the policies of the Oregon Growth Board.**

24 (3) **“Financial services and support” includes but is not limited to funding, access to**
25 **capital, asset building, business planning, market development, improving management skills**
26 **or any other type of service or support that enhances business development and furthers**
27 **economic development.**

28 (4) **“Local government” has the meaning given that term in ORS 174.116.**

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 (5) "State agency" means an officer, board, commission, department, division, institution,
2 branch or agency in the executive or administrative branch of state government.

3 **SECTION 2.** It is the intent of the Legislative Assembly, in enacting sections 1 to 7 of
4 this 2012 Act, to encourage investment in and availability of capital to businesses in this
5 state and to increase resources available to local governments and state agencies that cre-
6 ate, facilitate, maintain and promote financial services and support and to other efforts that
7 further economic development in Oregon.

8 **SECTION 3.** (1) The Oregon Growth Board is established to formulate and implement
9 policies and procedures to administer sections 1 to 7 of this 2012 Act, and to make recom-
10 mendations for the investment, reinvestment, management and coordination of funds in the
11 Oregon Growth Fund established under section 7 of this 2012 Act.

12 (2) The board shall consist of seven voting members and one to three nonvoting members
13 as follows:

14 (a) The State Treasurer shall be an ex officio voting member of the board.

15 (b) The Governor shall appoint six voting members, subject to Senate confirmation under
16 ORS 171.562 and 171.565 and the following:

17 (A) Two of the members shall be persons who do not belong to the same political party,
18 as determined by the appropriate entry on official election registration cards, and who are
19 selected from a list of four candidates, each candidate recommended by the President of the
20 Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives or
21 the Minority Leader of the House of Representatives, respectively.

22 (B) Members shall include at least one representative of each of the five congressional
23 districts in this state.

24 (C) At least two of the members must have varying experience in business capitalization,
25 with one member having expertise in banking and the other having expertise in investment
26 and loan portfolio management.

27 (D) At least two of the members must have experience as small business employers in
28 this state.

29 (c) The Director of the Oregon Business Development Department shall be an ex officio
30 nonvoting member of the board.

31 (d) Two members of the Legislative Assembly that belong to different political parties as
32 determined by the appropriate entry on official election registration cards, who are appointed
33 by agreement of the President of the Senate, the Minority Leader of the Senate, the Speaker
34 of the House of Representatives and the Minority Leader of the House of Representatives,
35 shall serve as nonvoting members of the board. If an agreement cannot be reached on both
36 members of the Legislative Assembly to serve on the board, no appointment shall be made
37 under this paragraph.

38 (3) The term of office of each member who is not an ex officio member is four years. A
39 member appointed by the Governor serves at the pleasure of the Governor. Before the expi-
40 ration of the term of a member who is not an ex officio member, the appointing authority
41 shall appoint a successor whose term begins on January 1 next following. A member is eli-
42 gible for reappointment. If there is a vacancy for any cause, including but not limited to the
43 end of a term of membership in the Legislative Assembly, the appointing authority shall
44 make an appointment to become immediately effective for the unexpired term.

45 (4) The board shall select one of its members as chairperson and another to serve as a

1 liaison with local governments for such terms and with duties and powers necessary for the
 2 performance of the functions of these offices as the board determines, consistent with this
 3 section.

4 (5) A majority of the voting members of the board constitutes a quorum for the trans-
 5 action of business.

6 (6) A member of the board may receive compensation and reimbursement for expenses
 7 as follows:

8 (a) Members of the Legislative Assembly as provided in ORS 171.072.

9 (b) Nonlegislative members in the manner and amounts provided in ORS 292.495. Claims
 10 for compensation and expenses incurred in performing the functions of the board shall be
 11 paid out of funds appropriated to the board for that purpose.

12 (7) The Oregon Business Development Department shall provide staff to the board as
 13 necessary to allow the board to carry out its responsibilities under sections 1 to 7 of this 2012
 14 Act.

15 **SECTION 4.** Notwithstanding the term of office specified by section 3 of this 2012 Act,
 16 of the members of the Oregon Growth Board who are not ex officio members and who are
 17 first appointed to the board:

18 (1) If two members are appointed under section 3 (2)(d) of this 2012 Act:

19 (a) Two shall serve for a term ending December 31, 2013.

20 (b) Two shall serve for a term ending December 31, 2014.

21 (c) Two shall serve for a term ending December 31, 2015.

22 (d) Two shall serve for a term ending December 31, 2016.

23 (2) If no members are appointed under section 3 (2)(d) of this 2012 Act:

24 (a) One shall serve for a term ending December 31, 2013.

25 (b) One shall serve for a term ending December 31, 2014.

26 (c) Two shall serve for a term ending December 31, 2015.

27 (d) Two shall serve for a term ending December 31, 2016.

28 **SECTION 5.** The Oregon Growth Board has the following duties, functions and powers:

29 (1) To maintain, invest and reinvest moneys in the Oregon Growth Fund established un-
 30 der section 7 of this 2012 Act consistent with the policies and procedures established by the
 31 board and the investment standard stated in ORS 293.726, including but not limited to the
 32 creation and maintenance of one or more investment funds within the Oregon Growth Fund.
 33 In exercising its authority under this subsection, the board may include economic factors,
 34 including but not limited to job retention and creation, as considerations in making invest-
 35 ment decisions.

36 (2) To make and enter into contracts, agreements or arrangements for the investment
 37 and management of moneys in the Oregon Growth Fund as provided in section 6 of this 2012
 38 Act and for other services the board deems reasonable and necessary to fulfill the duties of
 39 the board under this section.

40 (3) To make, purchase, guarantee or hold grants and loans, including but not limited to
 41 competitive grants and participation interests in loans, made to or from the Oregon Growth
 42 Fund for the benefit of qualified businesses for the purpose of furthering economic develop-
 43 ment.

44 (4) To qualify or certify businesses that invest in the Oregon Growth Fund for tax ad-
 45 vantages or tax credits that the board is authorized by law to qualify or certify or for any

1 other investment incentive approved by the board.

2 (5) To collaborate, cooperate and enter into agreements with local governments, state
3 agencies, financial institutions and other entities as appropriate to:

4 (a) Provide financial services and support to businesses for the purpose of furthering
5 economic development;

6 (b) Coordinate actions, responsibilities and resources that further economic development;
7 and

8 (c) Delegate between the board and a local government or state agency any duties,
9 functions or powers that the board, local government or state agency is authorized to per-
10 form if consistent with and necessary to the administration of sections 1 to 7 of this 2012
11 Act.

12 (6) To direct the Director of the Oregon Business Development Department to use credit
13 enhancement and equity investment devices in the implementation of loan and grant pro-
14 grams administered by the Oregon Business Development Department under ORS chapter
15 285B.

16 (7) To seek, solicit, obtain and accept local, state, federal and private resources and do-
17 nations for deposit into the Oregon Growth Fund to aid in the administration of sections 1
18 to 7 of this 2012 Act.

19 (8) To adopt rules that specify:

20 (a) The board's permissible investments, and activities and services that the board may
21 provide or engage in; and

22 (b) Other requirements that the board considers necessary for the exercise of the board's
23 duties, functions and powers under sections 1 to 7 of this 2012 Act.

24 (9) To make recommendations to the Legislative Assembly regarding:

25 (a) Appropriations of General Fund moneys to the Oregon Growth Fund;

26 (b) The terms of income and corporate excise tax subtractions or other tax expenditures,
27 as defined in ORS 291.201, that will promote and create private investment in the Oregon
28 Growth Fund;

29 (c) Incentives for private sector investment that further investment, capital availability,
30 job creation and economic development; and

31 (d) Legislation needed to further economic development.

32 **SECTION 6.** (1) The Oregon Growth Board shall contract with one or more management
33 companies to manage and invest the moneys in the Oregon Growth Fund established under
34 section 7 of this 2012 Act. For purposes of this subsection, a contract with a management
35 company may consist of:

36 (a) A partnership agreement under which the Oregon Growth Board is the limited part-
37 ner and the management company is the general partner; or

38 (b) Another form of payment or profit-sharing arrangement under which the Oregon
39 Growth Board may receive payment or another form of return in exchange for its invest-
40 ment in economic development.

41 (2) The provisions of ORS 293.726 do not apply to those assets of the Education Stability
42 Fund that are held in the Oregon Growth Fund.

43 (3) A management company selected to manage the Oregon Growth Fund shall manage
44 the moneys in the fund, subject to the policies and procedures and investment directives and
45 strategies of the Oregon Growth Board, with the care, skill and diligence that a prudent in-

1 investor acting in a similar capacity and familiar with such investments would use in managing
 2 and investing a similar fund. The management company shall invest moneys for the purpose
 3 of furthering economic development in an amount that is at least equal to the amount of the
 4 principal transferred from the Oregon Growth Fund to the management company for in-
 5 vestment.

6 (4) The contract between the board and a management company to manage the Oregon
 7 Growth Fund and the functions performed under the contract are not subject to the State
 8 Personnel Relations Law or ORS 279.835 to 279.855 or ORS chapter 279A or 279B.

9 (5) The Oregon Growth Board shall provide to local governments and state agencies any
 10 reports on the investment of moneys in the Oregon Growth Fund that are necessary to fulfill
 11 audit, financial, investment or other reporting requirements to which the Education Stability
 12 Fund is subject by law or standard accounting principles.

13 **SECTION 7.** (1) The Oregon Growth Fund is established in the State Treasury, separate
 14 and distinct from the General Fund. Interest earned by the Oregon Growth Fund shall be
 15 credited to the fund.

16 (2) Moneys in the Oregon Growth Fund consist of:

17 (a) Amounts donated to the fund;

18 (b) Moneys transferred to the fund from the federal government, state agencies or local
 19 governments;

20 (c) Amounts appropriated or otherwise transferred to the fund by the Legislative As-
 21 sembly;

22 (d) Earnings received on moneys in the fund; and

23 (e) Other amounts deposited in the fund from any source.

24 (3) Moneys in the fund are continuously appropriated to the Oregon Growth Board for
 25 the purpose of sections 1 to 7 of this 2012 Act.

26 (4) The board may establish accounts and subaccounts within the fund when the board
 27 determines that accounts or subaccounts are necessary or desirable and may credit any in-
 28 terest or income derived from moneys in the fund to any account or subaccount in the fund.

29 (5) The board may use moneys in the fund to pay the administrative costs associated with
 30 the fund and with administering sections 1 to 7 of this 2012 Act.

31 **SECTION 8.** The Oregon Growth Board shall submit a report to the Legislative Assembly
 32 on or before January 1, 2013. The report required by this section shall include:

33 (1) The policies and procedures formulated by the board for investment and management
 34 of moneys in the Oregon Growth Fund;

35 (2) The status of the administration of sections 1 to 7 of this 2012 Act;

36 (3) A summary of moneys invested and managed by the board, if any; and

37 (4) Recommendations for legislation that is related to the duties, functions, powers and
 38 policies of the board and that will further economic development in this state.

39 **SECTION 9.** (1) For each biennium, an amount equal to five percent of the funds trans-
 40 ferred to the Education Stability Fund under section 4, Article XV of the Oregon Constitu-
 41 tion, shall be transferred from the Administrative Services Economic Development Fund to
 42 the Oregon Growth Fund. Separate records must be maintained for moneys transferred un-
 43 der this subsection.

44 (2) The Oregon Department of Administrative Services shall make adjustments, as ap-
 45 propriate, in amounts transferred under subsection (1) of this section so that the total

1 amount transferred in any fiscal year is neither less than nor greater than five percent of
2 the amount required to be transferred under section 4, Article XV of the Oregon Constitu-
3 tion, to the Education Stability Fund.

4 (3) Adjustments required by subsection (2) of this section shall be made without consid-
5 eration of any interest or other earnings that have accrued during the fiscal year.

6 (4) Amounts transferred to the Oregon Growth Fund under this section are to be used
7 for the purpose of administering sections 1 to 7 of this 2012 Act in the furtherance of eco-
8 nomic development in this state.

9 **SECTION 10.** ORS 348.701, 348.702, 348.703, 348.704, 348.706, 348.707 and 348.710 and section
10 7, chapter 805, Oregon Laws 2009, are repealed.

11 **SECTION 11.** All funds remaining in the Oregon Growth Account created under ORS
12 348.702 and in the Oregon Resource and Technology Development Subaccount created under
13 ORS 348.706 on the operative date specified in section 26 of this 2012 Act shall be transferred
14 to the Oregon Growth Fund established under section 7 of this 2012 Act.

15
16 **ABOLISH AND TRANSFER**

17
18 **SECTION 12.** (1) The Oregon Growth Account Board is abolished. On the operative date
19 of this section, the tenure of office of the members of the Oregon Growth Account Board
20 ceases.

21 (2) All the duties, functions and powers of the Oregon Growth Account Board are im-
22 posed upon, transferred to and vested in the Oregon Growth Board established under section
23 3 of this 2012 Act.

24
25 **RECORDS AND PROPERTY**

26
27 **SECTION 13.** (1) The Oregon Growth Account Board shall deliver to the Oregon Growth
28 Board all records and property within the jurisdiction of the Oregon Growth Account Board
29 that relate to the duties, functions and powers transferred by section 12 of this 2012 Act.

30 (2) The Oregon Growth Board shall take possession of the records and property.

31
32 **UNEXPENDED REVENUES**

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34 **SECTION 14.** (1) The unexpended balances of amounts authorized to be expended by the
35 Oregon Growth Account Board for the biennium beginning July 1, 2011, from revenues dedi-
36 cated, continuously appropriated, appropriated or otherwise made available for the purpose
37 of administering and enforcing the duties, functions and powers transferred by section 12 of
38 this 2012 Act are transferred to and are available for expenditure by the Oregon Growth
39 Board for the biennium beginning July 1, 2011, for the purpose of administering and enforcing
40 the duties, functions and powers transferred by section 12 of this 2012 Act.

41 (2) The expenditure classifications, if any, established by Acts authorizing or limiting
42 expenditures by the Oregon Growth Account Board remain applicable to expenditures by the
43 Oregon Growth Board under this section.

44
45 **ACTIONS, PROCEEDINGS, PROSECUTIONS**

1 **SECTION 15.** The transfer of duties, functions and powers to the Oregon Growth Board
 2 by section 12 of this 2012 Act does not affect any action, proceeding or prosecution involving
 3 or with respect to such duties, functions and powers begun before and pending at the time
 4 of the transfer, except that the Oregon Growth Board is substituted for the Oregon Growth
 5 Account Board in the action, proceeding or prosecution.

6
 7 **LIABILITIES, DUTIES, OBLIGATIONS**
 8

9 **SECTION 16.** (1) Nothing in sections 12 to 18 of this 2012 Act relieves a person of a li-
 10 ability, duty or obligation accruing under or with respect to the duties, functions and powers
 11 transferred by section 12 of this 2012 Act. The Oregon Growth Board may undertake the
 12 collection or enforcement of any such liability, duty or obligation.

13 (2) The rights and obligations of the Oregon Growth Account Board legally incurred un-
 14 der contracts, leases and business transactions executed, entered into or begun before the
 15 operative date of section 12 of this 2012 Act are transferred to the Oregon Growth Board.
 16 For the purpose of succession to these rights and obligations, the Oregon Growth Board is
 17 a continuation of the Oregon Growth Account Board and not a new authority.

18
 19 **RULES**
 20

21 **SECTION 17.** Notwithstanding the transfer of duties, functions and powers by section 12
 22 of this 2012 Act, the rules of the Oregon Growth Account Board in effect on the operative
 23 date of section 12 of this 2012 Act continue in effect until superseded or repealed by rules
 24 of the Oregon Growth Board. References in rules of the Oregon Growth Account Board to
 25 the Oregon Growth Account Board or an officer of the Oregon Growth Account Board are
 26 considered to be references to the Oregon Growth Board or an officer of the Oregon Growth
 27 Board.

28 **SECTION 18.** Whenever, in any uncodified law or resolution of the Legislative Assembly
 29 or in any rule, document, record or proceeding authorized by the Legislative Assembly, ref-
 30 erence is made to the Oregon Growth Account Board or an officer of the Oregon Growth
 31 Account Board, the reference is considered to be a reference to the Oregon Growth Board
 32 or an officer of the Oregon Growth Board.

33
 34 **CONFORMING AMENDMENTS RELATING TO**
 35 **TRANSFER OF AUTHORITY**
 36

37 **SECTION 19.** ORS 192.502 is amended to read:

38 192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

39 (1) Communications within a public body or between public bodies of an advisory nature to the
 40 extent that they cover other than purely factual materials and are preliminary to any final agency
 41 determination of policy or action. This exemption shall not apply unless the public body shows that
 42 in the particular instance the public interest in encouraging frank communication between officials
 43 and employees of public bodies clearly outweighs the public interest in disclosure.

44 (2) Information of a personal nature such as but not limited to that kept in a personal, medical
 45 or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the

1 public interest by clear and convincing evidence requires disclosure in the particular instance. The
 2 party seeking disclosure shall have the burden of showing that public disclosure would not consti-
 3 tute an unreasonable invasion of privacy.

4 (3) Public body employee or volunteer addresses, Social Security numbers, dates of birth and
 5 telephone numbers contained in personnel records maintained by the public body that is the em-
 6 ployer or the recipient of volunteer services. This exemption:

7 (a) Does not apply to the addresses, dates of birth and telephone numbers of employees or vol-
 8 unteers who are elected officials, except that a judge or district attorney subject to election may
 9 seek to exempt the judge's or district attorney's address or telephone number, or both, under the
 10 terms of ORS 192.445;

11 (b) Does not apply to employees or volunteers to the extent that the party seeking disclosure
 12 shows by clear and convincing evidence that the public interest requires disclosure in a particular
 13 instance;

14 (c) Does not apply to a substitute teacher as defined in ORS 342.815 when requested by a pro-
 15 fessional education association of which the substitute teacher may be a member; and

16 (d) Does not relieve a public employer of any duty under ORS 243.650 to 243.782.

17 (4) Information submitted to a public body in confidence and not otherwise required by law to
 18 be submitted, where such information should reasonably be considered confidential, the public body
 19 has obliged itself in good faith not to disclose the information, and when the public interest would
 20 suffer by the disclosure.

21 (5) Information or records of the Department of Corrections, including the State Board of Parole
 22 and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabilitation of
 23 a person in custody of the department or substantially prejudice or prevent the carrying out of the
 24 functions of the department, if the public interest in confidentiality clearly outweighs the public in-
 25 terest in disclosure.

26 (6) Records, reports and other information received or compiled by the Director of the Depart-
 27 ment of Consumer and Business Services in the administration of ORS chapters 723 and 725 not
 28 otherwise required by law to be made public, to the extent that the interests of lending institutions,
 29 their officers, employees and customers in preserving the confidentiality of such information out-
 30 weighs the public interest in disclosure.

31 (7) Reports made to or filed with the court under ORS 137.077 or 137.530.

32 (8) Any public records or information the disclosure of which is prohibited by federal law or
 33 regulations.

34 (9)(a) Public records or information the disclosure of which is prohibited or restricted or other-
 35 wise made confidential or privileged under Oregon law.

36 (b) Subject to ORS 192.423, paragraph (a) of this subsection does not apply to factual information
 37 compiled in a public record when:

38 (A) The basis for the claim of exemption is ORS 40.225;

39 (B) The factual information is not prohibited from disclosure under any applicable state or fed-
 40 eral law, regulation or court order and is not otherwise exempt from disclosure under ORS 192.410
 41 to 192.505;

42 (C) The factual information was compiled by or at the direction of an attorney as part of an
 43 investigation on behalf of the public body in response to information of possible wrongdoing by the
 44 public body;

45 (D) The factual information was not compiled in preparation for litigation, arbitration or an

1 administrative proceeding that was reasonably likely to be initiated or that has been initiated by
 2 or against the public body; and

3 (E) The holder of the privilege under ORS 40.225 has made or authorized a public statement
 4 characterizing or partially disclosing the factual information compiled by or at the attorney's di-
 5 rection.

6 (10) Public records or information described in this section, furnished by the public body ori-
 7 ginally compiling, preparing or receiving them to any other public officer or public body in con-
 8 nection with performance of the duties of the recipient, if the considerations originally giving rise
 9 to the confidential or exempt nature of the public records or information remain applicable.

10 (11) Records of the Energy Facility Siting Council concerning the review or approval of security
 11 programs pursuant to ORS 469.530.

12 (12) Employee and retiree address, telephone number and other nonfinancial membership records
 13 and employee financial records maintained by the Public Employees Retirement System pursuant to
 14 ORS chapters 238 and 238A.

15 (13) Records of or submitted to the State Treasurer, the Oregon Investment Council or the
 16 agents of the treasurer or the council relating to active or proposed publicly traded investments
 17 under ORS chapter 293, including but not limited to records regarding the acquisition, exchange or
 18 liquidation of the investments. For the purposes of this subsection:

19 (a) The exemption does not apply to:

20 (A) Information in investment records solely related to the amount paid directly into an invest-
 21 ment by, or returned from the investment directly to, the treasurer or council; or

22 (B) The identity of the entity to which the amount was paid directly or from which the amount
 23 was received directly.

24 (b) An investment in a publicly traded investment is no longer active when acquisition, exchange
 25 or liquidation of the investment has been concluded.

26 (14)(a) Records of or submitted to the State Treasurer, the Oregon Investment Council, the
 27 Oregon Growth [*Account*] Board or the agents of the treasurer, council or board relating to actual
 28 or proposed investments under ORS chapter 293 or 348 in a privately placed investment fund or a
 29 private asset including but not limited to records regarding the solicitation, acquisition, deployment,
 30 exchange or liquidation of the investments including but not limited to:

31 (A) Due diligence materials that are proprietary to an investment fund, to an asset ownership
 32 or to their respective investment vehicles.

33 (B) Financial statements of an investment fund, an asset ownership or their respective invest-
 34 ment vehicles.

35 (C) Meeting materials of an investment fund, an asset ownership or their respective investment
 36 vehicles.

37 (D) Records containing information regarding the portfolio positions in which an investment
 38 fund, an asset ownership or their respective investment vehicles invest.

39 (E) Capital call and distribution notices of an investment fund, an asset ownership or their re-
 40 spective investment vehicles.

41 (F) Investment agreements and related documents.

42 (b) The exemption under this subsection does not apply to:

43 (A) The name, address and vintage year of each privately placed investment fund.

44 (B) The dollar amount of the commitment made to each privately placed investment fund since
 45 inception of the fund.

1 (C) The dollar amount of cash contributions made to each privately placed investment fund since
2 inception of the fund.

3 (D) The dollar amount, on a fiscal year-end basis, of cash distributions received by the State
4 Treasurer, the Oregon Investment Council, the Oregon Growth [*Account*] Board or the agents of the
5 treasurer, council or board from each privately placed investment fund.

6 (E) The dollar amount, on a fiscal year-end basis, of the remaining value of assets in a privately
7 placed investment fund attributable to an investment by the State Treasurer, the Oregon Investment
8 Council, the Oregon Growth [*Account*] Board or the agents of the treasurer, council or board.

9 (F) The net internal rate of return of each privately placed investment fund since inception of
10 the fund.

11 (G) The investment multiple of each privately placed investment fund since inception of the fund.

12 (H) The dollar amount of the total management fees and costs paid on an annual fiscal year-end
13 basis to each privately placed investment fund.

14 (I) The dollar amount of cash profit received from each privately placed investment fund on a
15 fiscal year-end basis.

16 (15) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the
17 Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated as
18 exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

19 (16) Reports of unclaimed property filed by the holders of such property to the extent permitted
20 by ORS 98.352.

21 (17)(a) The following records, communications and information submitted to the Oregon Business
22 Development Commission, the Oregon Business Development Department, the State Department of
23 Agriculture, the Oregon Growth [*Account*] Board, the Port of Portland or other ports as defined in
24 ORS 777.005, or a county or city governing body and any board, department, commission, council
25 or agency thereof, by applicants for investment funds, grants, loans, services or economic develop-
26 ment moneys, support or assistance including, but not limited to, those described in ORS 285A.224:

27 (A) Personal financial statements.

28 (B) Financial statements of applicants.

29 (C) Customer lists.

30 (D) Information of an applicant pertaining to litigation to which the applicant is a party if the
31 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such
32 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been
33 concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discov-
34 ery or deposition statutes to a party to litigation or potential litigation.

35 (E) Production, sales and cost data.

36 (F) Marketing strategy information that relates to applicant's plan to address specific markets
37 and applicant's strategy regarding specific competitors.

38 (b) The following records, communications and information submitted to the State Department
39 of Energy by applicants for tax credits:

40 (A) Personal financial statements.

41 (B) Financial statements of applicants.

42 (C) Customer lists.

43 (D) Information of an applicant pertaining to litigation to which the applicant is a party if the
44 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such
45 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been

1 concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discov-
 2 ery or deposition statutes to a party to litigation or potential litigation.

3 (E) Production, sales and cost data.

4 (F) Marketing strategy information that relates to applicant's plan to address specific markets
 5 and applicant's strategy regarding specific competitors.

6 (18) Records, reports or returns submitted by private concerns or enterprises required by law
 7 to be submitted to or inspected by a governmental body to allow it to determine the amount of any
 8 transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such
 9 information is in a form which would permit identification of the individual concern or enterprise.
 10 Nothing in this subsection shall limit the use which can be made of such information for regulatory
 11 purposes or its admissibility in any enforcement proceedings. The public body shall notify the tax-
 12 payer of the delinquency immediately by certified mail. However, in the event that the payment or
 13 delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the
 14 public body shall disclose, upon the request of any person, the following information:

15 (a) The identity of the individual concern or enterprise that is delinquent over 60 days in the
 16 payment or delivery of the taxes.

17 (b) The period for which the taxes are delinquent.

18 (c) The actual, or estimated, amount of the delinquency.

19 (19) All information supplied by a person under ORS 151.485 for the purpose of requesting ap-
 20 pointed counsel, and all information supplied to the court from whatever source for the purpose of
 21 verifying the financial eligibility of a person pursuant to ORS 151.485.

22 (20) Workers' compensation claim records of the Department of Consumer and Business Services,
 23 except in accordance with rules adopted by the Director of the Department of Consumer and Busi-
 24 ness Services, in any of the following circumstances:

25 (a) When necessary for insurers, self-insured employers and third party claim administrators to
 26 process workers' compensation claims.

27 (b) When necessary for the director, other governmental agencies of this state or the United
 28 States to carry out their duties, functions or powers.

29 (c) When the disclosure is made in such a manner that the disclosed information cannot be used
 30 to identify any worker who is the subject of a claim.

31 (d) When a worker or the worker's representative requests review of the worker's claim record.

32 (21) Sensitive business records or financial or commercial information of the Oregon Health and
 33 Science University that is not customarily provided to business competitors.

34 (22) Records of Oregon Health and Science University regarding candidates for the position of
 35 president of the university.

36 (23) The records of a library, including:

37 (a) Circulation records, showing use of specific library material by a named person;

38 (b) The name of a library patron together with the address or telephone number of the patron;
 39 and

40 (c) The electronic mail address of a patron.

41 (24) The following records, communications and information obtained by the Housing and Com-
 42 munity Services Department in connection with the department's monitoring or administration of
 43 financial assistance or of housing or other developments:

44 (a) Personal and corporate financial statements and information, including tax returns.

45 (b) Credit reports.

- 1 (c) Project appraisals.
- 2 (d) Market studies and analyses.
- 3 (e) Articles of incorporation, partnership agreements and operating agreements.
- 4 (f) Commitment letters.
- 5 (g) Project pro forma statements.
- 6 (h) Project cost certifications and cost data.
- 7 (i) Audits.
- 8 (j) Project tenant correspondence.
- 9 (k) Personal information about a tenant.
- 10 (L) Housing assistance payments.
- 11 (25) Raster geographic information system (GIS) digital databases, provided by private forestland
- 12 owners or their representatives, voluntarily and in confidence to the State Forestry Department,
- 13 that is not otherwise required by law to be submitted.
- 14 (26) Sensitive business, commercial or financial information furnished to or developed by a
- 15 public body engaged in the business of providing electricity or electricity services, if the information
- 16 is directly related to a transaction described in ORS 261.348, or if the information is directly related
- 17 to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and
- 18 disclosure of the information would cause a competitive disadvantage for the public body or its re-
- 19 tail electricity customers. This subsection does not apply to cost-of-service studies used in the de-
- 20 velopment or review of generally applicable rate schedules.
- 21 (27) Sensitive business, commercial or financial information furnished to or developed by the
- 22 City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath
- 23 Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085
- 24 and disclosure of the information would cause a competitive disadvantage for the Klamath
- 25 Cogeneration Project. This subsection does not apply to cost-of-service studies used in the develop-
- 26 ment or review of generally applicable rate schedules.
- 27 (28) Personally identifiable information about customers of a municipal electric utility or a
- 28 people's utility district or the names, dates of birth, driver license numbers, telephone numbers,
- 29 electronic mail addresses or Social Security numbers of customers who receive water, sewer or
- 30 storm drain services from a public body as defined in ORS 174.109. The utility or district may re-
- 31 lease personally identifiable information about a customer, and a public body providing water, sewer
- 32 or storm drain services may release the name, date of birth, driver license number, telephone num-
- 33 ber, electronic mail address or Social Security number of a customer, if the customer consents in
- 34 writing or electronically, if the disclosure is necessary for the utility, district or other public body
- 35 to render services to the customer, if the disclosure is required pursuant to a court order or if the
- 36 disclosure is otherwise required by federal or state law. The utility, district or other public body
- 37 may charge as appropriate for the costs of providing such information. The utility, district or other
- 38 public body may make customer records available to third party credit agencies on a regular basis
- 39 in connection with the establishment and management of customer accounts or in the event such
- 40 accounts are delinquent.
- 41 (29) A record of the street and number of an employee's address submitted to a special district
- 42 to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.
- 43 (30) Sensitive business records, capital development plans or financial or commercial information
- 44 of Oregon Corrections Enterprises that is not customarily provided to business competitors.
- 45 (31) Documents, materials or other information submitted to the Director of the Department of

1 Consumer and Business Services in confidence by a state, federal, foreign or international regulatory
 2 or law enforcement agency or by the National Association of Insurance Commissioners, its affiliates
 3 or subsidiaries under ORS 86A.095 to 86A.198, 697.005 to 697.095, 697.602 to 697.842, 705.137, 717.200
 4 to 717.320, 717.900 or 717.905, ORS chapter 59, 723, 725 or 726, the Bank Act or the Insurance Code
 5 when:

6 (a) The document, material or other information is received upon notice or with an under-
 7 standing that it is confidential or privileged under the laws of the jurisdiction that is the source of
 8 the document, material or other information; and

9 (b) The director has obligated the Department of Consumer and Business Services not to dis-
 10 close the document, material or other information.

11 (32) A county elections security plan developed and filed under ORS 254.074.

12 (33) Information about review or approval of programs relating to the security of:

13 (a) Generation, storage or conveyance of:

14 (A) Electricity;

15 (B) Gas in liquefied or gaseous form;

16 (C) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

17 (D) Petroleum products;

18 (E) Sewage; or

19 (F) Water.

20 (b) Telecommunication systems, including cellular, wireless or radio systems.

21 (c) Data transmissions by whatever means provided.

22 (34) The information specified in ORS 25.020 (8) if the Chief Justice of the Supreme Court des-
 23 ignates the information as confidential by rule under ORS 1.002.

24 (35)(a) Employer account records of the State Accident Insurance Fund Corporation.

25 (b) As used in this subsection, “employer account records” means all records maintained in any
 26 form that are specifically related to the account of any employer insured, previously insured or un-
 27 der consideration to be insured by the State Accident Insurance Fund Corporation and any infor-
 28 mation obtained or developed by the corporation in connection with providing, offering to provide
 29 or declining to provide insurance to a specific employer. “Employer account records” includes, but
 30 is not limited to, an employer’s payroll records, premium payment history, payroll classifications,
 31 employee names and identification information, experience modification factors, loss experience and
 32 dividend payment history.

33 (c) The exemption provided by this subsection may not serve as the basis for opposition to the
 34 discovery documents in litigation pursuant to applicable rules of civil procedure.

35 (36)(a) Claimant files of the State Accident Insurance Fund Corporation.

36 (b) As used in this subsection, “claimant files” includes, but is not limited to, all records held
 37 by the corporation pertaining to a person who has made a claim, as defined in ORS 656.005, and all
 38 records pertaining to such a claim.

39 (c) The exemption provided by this subsection may not serve as the basis for opposition to the
 40 discovery documents in litigation pursuant to applicable rules of civil procedure.

41 (37) Except as authorized by ORS 408.425, records that certify or verify an individual’s discharge
 42 or other separation from military service.

43 (38) Records of or submitted to a domestic violence service or resource center that relate to the
 44 name or personal information of an individual who visits a center for service, including the date of
 45 service, the type of service received, referrals or contact information or personal information of a

1 family member of the individual. As used in this subsection, “domestic violence service or resource
 2 center” means an entity, the primary purpose of which is to assist persons affected by domestic or
 3 sexual violence by providing referrals, resource information or other assistance specifically of ben-
 4 efit to domestic or sexual violence victims.

5 **SECTION 20.** ORS 284.701 is amended to read:

6 284.701. As used in ORS 284.701 to 284.749:

7 (1) “Clean energy” means a technology, product, process or innovation that involves conserva-
 8 tion of natural resources, solar energy, green building products and services, biofuels, biomass en-
 9 ergy, bio-based products or other renewable and sustainable energy.

10 (2) “Innovation-based economic development” includes, but is not limited to, a technology,
 11 product, process or innovation that:

12 (a) Derives from and supports innovation and research;

13 (b) Promotes Oregon’s market capacities and competitive advantages;

14 (c) Involves technology-based innovation;

15 (d) Facilitates the creation of new products, processes and services that retain and create
 16 high-wage jobs;

17 (e) Involves the establishment of partnerships between and collaboration with research insti-
 18 tutions, the private sector and public entities;

19 (f) Endeavors to transfer innovative technologies to the private sector or to commercialize in-
 20 novative research and development; and

21 (g) Includes, but is not limited to, clean energy and clean energy economic development.

22 (3) “Oregon growth business” means:

23 (a) An individual, group of individuals or private sector business entity, including but not limited
 24 to a partnership, limited liability company, corporation, firm, association or other business entity,
 25 that engages in business that furthers innovation-based economic development, that has the
 26 capacity, upon obtaining appropriate capital, to generate significant high-skill, high-wage employ-
 27 ment in Oregon and that conducts business in Oregon; or

28 (b) An emerging growth business [*as defined in ORS 348.701*] **consisting of an individual or**
 29 **group of individuals or a new or small company, including but not limited to any new or small**
 30 **partnership, limited liability company, corporation, firm, association or other business entity,**
 31 **that has the capacity, upon obtaining appropriate capital, to generate significant high-skill,**
 32 **high-wage employment in Oregon and that conducts business in Oregon.**

33 (4) “Public entity” means any agency of the federal or state government, county, city, town,
 34 public corporation or political subdivision in this state.

35 (5) “Research institution” means:

36 (a) A community college as defined in ORS 341.005;

37 (b) A public university listed in ORS 352.002;

38 (c) The Oregon Health and Science University public corporation created under ORS 353.020;

39 (d) An Oregon-based, generally accredited, not-for-profit private institution of higher education;

40 (e) A federal research laboratory conducting research in Oregon;

41 (f) A private not-for-profit research institution located in Oregon;

42 (g) An institution for higher education as defined in ORS 289.005; or

43 (h) A private institution of higher education located in Oregon.

44 (6) “Traded sector” has the meaning given that term in ORS 285A.010.

45 **SECTION 21.** ORS 284.706 is amended to read:

1 284.706. (1) There is created the Oregon Innovation Council consisting of the following voting
2 members:

3 (a) The Governor or the Governor's designated representative, who shall be chairperson of the
4 council.

5 (b) Five members appointed by the Governor who are engaged in the operations of Oregon
6 traded sector industries or Oregon growth businesses.

7 (c) One member appointed by the Governor who is a representative of an Oregon-based, gener-
8 ally accredited, not-for-profit private institution of higher education.

9 (d) A member of the Oregon Growth [*Account*] Board, appointed by the board[, *who has experi-*
10 *ence in the field of venture capital*].

11 (e) A member of the Engineering and Technology Industry Council, appointed by the Engineer-
12 ing and Technology Industry Council.

13 (f) The Director of the Oregon Business Development Department.

14 (g) The Chancellor of the Oregon University System.

15 (h) The Commissioner for Community College Services.

16 (i) The State Treasurer.

17 (2)(a) The Speaker of the House of Representatives shall appoint two members to the council
18 who are members of the House of Representatives.

19 (b) The President of the Senate shall appoint two members to the council who are members of
20 the Senate.

21 (c) Members of the Legislative Assembly appointed to the council are nonvoting members and
22 may act in an advisory capacity only.

23 (3) The following persons, or their representatives, shall serve as ex officio, nonvoting members
24 of the council:

25 (a) The presiding officer of the Oregon Business Development Commission.

26 (b) The president of the State Board of Higher Education.

27 (c) The chairperson of the State Board of Education.

28 (d) An executive officer of an association representing Oregon-based, generally accredited, not-
29 for-profit private institutions of higher education, appointed by the Governor.

30 (4) The term of office of each appointed voting member of the council is three years, but an
31 appointed member serves at the pleasure of the appointing authority. Before the expiration of the
32 term of an appointed voting member, the appointing authority shall appoint a successor whose term
33 begins on July 1 next following. An appointed member is eligible for reappointment. If there is a
34 vacancy for any cause, the appointing authority shall make an appointment to become immediately
35 effective for the remainder of the unexpired term.

36 (5) A majority of the voting members of the council constitutes a quorum for the transaction
37 of business.

38 (6) Official action by the council requires the approval of a majority of the voting members of
39 the council.

40 (7) The council shall meet at least twice per fiscal year at a place, day and time determined by
41 the chairperson. The council may also meet at other times and places specified by a call of the
42 chairperson or by written request of a majority of the voting members of the council.

43 (8) The council may adopt rules necessary for the operation of the council.

44 (9) The council may establish committees and delegate to the committees duties as the council
45 considers desirable.

1 (10) The Oregon Business Development Department shall provide staff support to the council.

2 (11) Members of the council who are members of the Legislative Assembly are entitled to com-
 3 pensation and expense reimbursement as provided in ORS 171.072.

4 (12) Members of the council who are not members of the Legislative Assembly are entitled to
 5 compensation and expenses incurred by them in the performance of their official duties in the man-
 6 ner and amounts provided for in ORS 292.495. Claims for compensation and expenses of members
 7 of the council who are public officers shall be paid out of funds appropriated to the public agency
 8 that employs the member. Claims for compensation and expenses of members of the council who are
 9 not public officers shall be paid out of funds appropriated to the Oregon Business Development De-
 10 partment for that purpose.

11 (13) All agencies of state government, as defined in ORS 174.111, are directed to assist the
 12 council in the performance of its duties and, to the extent permitted by laws relating to
 13 confidentiality, to furnish such information and advice as the members of the council consider nec-
 14 essary to perform their duties.

15 **SECTION 22.** ORS 293.731 is amended to read:

16 293.731. Subject to the objective set forth in ORS 293.721 and the standards set forth in ORS
 17 293.726, the Oregon Investment Council shall formulate policies for the investment and reinvestment
 18 of moneys in the investment funds and the acquisition, retention, management and disposition of
 19 investments of the investment funds. The council, from time to time, shall review those policies and
 20 make changes therein as it considers necessary or desirable. The council may formulate separate
 21 policies for any fund included in the investment funds. This section does not apply to the Oregon
 22 Growth [Account] **Fund**, the Oregon Growth [Account] Board, the Oregon Commercialized Research
 23 Fund, the Oregon Innovation Fund or the Oregon Innovation Council.

24 **SECTION 23.** ORS 293.733 is amended to read:

25 293.733. (1) In making and implementing investment decisions related to venture capital, the
 26 Oregon Investment Council and the investment officer have a duty to look first at Oregon opportu-
 27 nities for diversification unless, under the circumstances, it is not prudent to do so.

28 (2) At any given time, the council shall have at least \$100 million in venture capital investments
 29 in Oregon unless, under the circumstances, it is not prudent to do so.

30 (3) As used in this section:

31 (a) “Emerging growth business” *[has the meaning given that term in ORS 348.701]* **means an**
 32 **individual or group of individuals or a new or small company, including but not limited to**
 33 **any new or small partnership, limited liability company, corporation, firm, association or**
 34 **other business entity, that has the capacity, upon obtaining appropriate capital, to generate**
 35 **significant high-skill, high-wage employment in Oregon and that conducts business in**
 36 **Oregon.**

37 (b) “Venture capital” includes but is not limited to emerging growth businesses.

38 **SECTION 24.** ORS 293.761 is amended to read:

39 293.761. (1) The investment officer shall follow generally accepted accounting practices and
 40 provide to the officer or body having control and administration of any investment funds any infor-
 41 mation necessary for financial reporting required by law.

42 (2) The investment officer shall separately identify investments held in the [*Oregon Growth Ac-*
 43 *count established in ORS 348.702 and the Oregon Resource and Technology Development Subaccount*
 44 *established in ORS 348.706]* **Oregon Growth Fund established under section 7 of this 2012 Act**
 45 as part of the information provided under this section on the Education Stability Fund.

SECTION 25. ORS 293.796 is amended to read:

293.796. (1) The Legislative Assembly finds that:

(a) The availability of venture capital for the start-up and subsequent expansion of new businesses is critical to the continued growth and development of the economy of Oregon.

(b) There exists an estimated gap of between \$100 million and \$200 million between available venture capital resources and the need of Oregon businesses for such resources.

(c) Investments in start-up and expanding businesses, in minority or women business enterprises and in emerging growth businesses can produce substantial positive returns for long-term investors.

(d) Pension funds managed by the Oregon Investment Council constitute a major financial resource of the State of Oregon, and that such funds may be prudently invested in start-up and emerging growth businesses in this state under policies established by the Oregon Investment Council.

(2) As used in this section:

(a) "Emerging growth business" *[has the meaning given that term in ORS 348.701]* means an individual or group of individuals or a new or small company, including but not limited to any new or small partnership, limited liability company, corporation, firm, association or other business entity, that has the capacity, upon obtaining appropriate capital, to generate significant high-skill, high-wage employment in Oregon and that conducts business in Oregon.

(b) "Minority or women business enterprise" has the meaning given that term in ORS 200.005.

**OPERATIVE DATE RELATING TO
TRANSFER OF AUTHORITY**

SECTION 26. Sections 9 and 11 to 18 of this 2012 Act, the amendments to ORS 192.502, 284.701, 284.706, 293.731, 293.733, 293.761 and 293.796 by sections 19 to 25 of this 2012 Act and the repeal of ORS 348.701, 348.702, 348.703, 348.704, 348.706, 348.707 and 348.710 and section 7, chapter 805, Oregon Laws 2009, by section 10 of this 2012 Act become operative on June 30, 2013.

UNIT CAPTIONS

SECTION 27. The unit captions used in this 2012 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2012 Act.

EMERGENCY CLAUSE

SECTION 28. This 2012 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect on its passage.

