

House Bill 2852

Sponsored by Representative WHISNANT

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**.

Directs Legislative Fiscal Officer to prepare fiscal impact statement on legislative measures reported out of committee that would have financial effect on small businesses in state.

Transfers responsibility for revenue estimates upon which legislatively adopted budget is based to State Treasurer. Allows State Treasurer to contract with qualified nonpartisan public or private entity to prepare revenue estimates.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to state finance; creating new provisions; amending ORS 291.349, 291.357 and 314.840; and
3 declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS 173.025 to**
6 **173.055.**

7 **SECTION 2. (1) As used in this section, "small business" has the meaning given that**
8 **term in ORS 183.310.**

9 **(2) The Legislative Fiscal Officer, with the aid of the Oregon Department of Administra-**
10 **tive Services, the Legislative Revenue Officer and state agencies, shall prepare a fiscal im-**
11 **act statement for each measure reported out of a committee of the Legislative Assembly**
12 **that would have a financial effect on small businesses in this state. The statement must de-**
13 **scribe the financial effect that the measure would, if enacted, have on small businesses in**
14 **this state.**

15 **SECTION 3. (1) In addition to the quarterly estimates prepared by the Oregon Depart-**
16 **ment of Administrative Services under ORS 291.342, the State Treasurer, with the assistance**
17 **of the Legislative Revenue Officer, the Legislative Fiscal Officer, the Department of Revenue**
18 **and the Oregon Department of Administrative Services, shall for each calendar quarter of**
19 **the year ascertain by computation and estimate the total amount of revenue available for**
20 **state purposes for the current fiscal year, as well as the amount of revenue received quar-**
21 **terly, cumulated throughout the biennium.**

22 **(2) During a regular session of the Legislative Assembly held in an odd-numbered year,**
23 **as specified in ORS 171.010, the State Treasurer shall also estimate the total anticipated re-**
24 **venues available for purposes of enacting the legislatively adopted budget, as defined in ORS**
25 **291.002, for the next biennium.**

26 **(3) The State Treasurer shall report the estimates of revenues to the Emergency Board,**
27 **or if the Legislative Assembly is in session, to the Joint Committee on Ways and Means.**

28 **(4) For purposes of enacting the legislatively adopted budget, as defined in ORS 291.002,**
29 **the Legislative Assembly shall use the estimates of revenues prepared by the State Treas-**

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 **urer under subsections (1) and (2) of this section.**

2 **(5) In carrying out the duties imposed under subsections (1) to (3) of this section, the**
 3 **State Treasurer shall issue quarterly a statement setting forth the methodology and as-**
 4 **sumptions used in making the estimates of revenues. Nothing in this subsection requires the**
 5 **statement to set forth procedures used or methods used to determine either the methodology**
 6 **or the assumptions.**

7 **(6)(a) Except as provided in paragraph (b) of this subsection, an estimate of revenues or**
 8 **revenue forecast required under any provision of the Oregon Constitution or any provision**
 9 **of law other than this section shall be considered to be an estimate or forecast prepared by**
 10 **the State Treasurer.**

11 **(b) An estimate of revenues or revenue forecast required under Article IX, section 14,**
 12 **of the Oregon Constitution, or ORS 291.216 or 291.349 shall be considered to be an estimate**
 13 **or forecast prepared by the Oregon Department of Administrative Services under ORS**
 14 **291.342 or 291.348 or other authority.**

15 **(7) The State Treasurer may contract with a qualified nonpartisan public or private en-**
 16 **tity to perform the duties of the State Treasurer as required under this section.**

17 **SECTION 4.** ORS 291.349 is amended to read:

18 291.349. (1) As soon as practicable after adjournment sine die of the odd-numbered year regular
 19 session of the Legislative Assembly, the Oregon Department of Administrative Services shall report
 20 to the Legislative Revenue Officer and the Legislative Fiscal Officer the estimate as of July 1 of the
 21 first year of the biennium of General Fund and State Lottery Fund revenues that will be received
 22 by the state during that biennium. The Oregon Department of Administrative Services shall base its
 23 estimate on the last forecast [*given to the Legislative Assembly*] **made by the department** before
 24 adjournment sine die of the odd-numbered year regular session [*on which the printed, adopted budget*
 25 *prepared in the Oregon Department of Administrative Services is based*], adjusted only insofar as
 26 necessary to reflect changes in laws adopted at that session. The report shall contain the estimated
 27 revenues from corporate income and excise taxes separately from the estimated revenues from other
 28 General Fund sources. The Oregon Department of Administrative Services may revise the estimate
 29 if necessary following adjournment sine die of a special session or an even-numbered year regular
 30 session of the Legislative Assembly, but any revision does not affect the basis of the computation
 31 described in subsection (3) or (4) of this section.

32 (2) As soon as practicable after the end of the biennium, the Oregon Department of Adminis-
 33 trative Services shall report to the Legislative Revenue Officer and the Legislative Fiscal Officer,
 34 or the Legislative Assembly if it is in session, the amount of General Fund revenues collected as
 35 of the last June 30 of the preceding biennium. The report shall contain the collections from corpo-
 36 rate income and excise taxes separately from collections from other sources.

37 (3) If the revenues received from the corporate income and excise taxes during the biennium
 38 exceed the amounts estimated to be received from such taxes for the biennium, as estimated after
 39 adjournment sine die of the odd-numbered year regular session, by two percent or more, the total
 40 amount of that excess shall be retained in the General Fund and used, in the manner described in
 41 ORS 291.345, to provide additional funding for public education, kindergarten through grade 12.

42 (4) If the revenues received from General Fund revenue sources, exclusive of those described in
 43 subsection (3) of this section, during the biennium exceed the amounts estimated to be received from
 44 such sources for the biennium, as estimated after adjournment sine die of the odd-numbered year
 45 regular session, by two percent or more, there shall be credited to personal income taxpayers an

1 amount equal to the total amount of that excess, reduced by the cost certified by the Department
2 of Revenue under ORS 291.351 as being allocable to credits described under this subsection. The
3 excess amount to be credited shall be credited to personal income taxpayers in a percentage amount
4 of prior year personal income tax liability as determined under subsection (5) of this section.

5 (5)(a) If there is an excess to be credited under subsection (4) of this section, on or before Oc-
6 tober 1, following the end of each biennium, the Oregon Department of Administrative Services shall
7 determine and certify to the Department of Revenue the percentage amounts of credit for purposes
8 of subsection (4) of this section. The percentage amounts determined shall be percentage amounts
9 to the nearest one-tenth of a percent that will distribute the excess to be credited to personal in-
10 come taxpayers.

11 (b) The percentage amount applicable to subsection (4) of this section shall equal the amount
12 distributed under subsection (4) of this section divided by the estimated total personal income tax
13 liability for all personal income taxpayers for tax years beginning in the calendar year immediately
14 preceding the calendar year in which the excess is determined.

15 (c) The amount of the surplus credit under subsection (4) of this section is determined by
16 multiplying the percentage amount determined under paragraph (b) of this subsection by the total
17 amount of a personal income taxpayer's tax liability for the tax year beginning in the calendar year
18 immediately preceding the calendar year in which the excess is determined in order to calculate the
19 amount to be credited to the taxpayer.

20 (d) The credit shall be determined based on the tax liability as shown on the return of the tax-
21 payer or as corrected by the Department of Revenue.

22 (e) The credit shall be computed after the allowance of a credit provided under ORS 316.082,
23 316.131 or 316.292, but before the allowance of any other credit or offset against tax liability allowed
24 or allowable under any provision of law of this state, and before the application of estimated tax
25 payments, withholding or other advance tax payments.

26 (f) For personal income taxpayers, if a credit applied against tax liability as described in para-
27 graph (e) of this subsection reduces tax liability to zero and an amount of the credit remains unused,
28 the remaining unused amount shall be refunded to the taxpayer. For purposes of ORS chapters 305,
29 314, 315 and 316, refunds issued under this paragraph are refunds of an overpayment of tax imposed
30 under ORS chapter 316.

31 (g) The Department of Revenue may prescribe by rule the manner of calculating and claiming
32 a credit if the filing status of a taxpayer changes between the tax year for which a credit may be
33 claimed and the succeeding tax year.

34 (6) A refund may not be made under this section to a taxpayer if the amount of the refund is
35 less than \$1.

36 (7) Not later than October 15 following the end of the biennium, the Department of Revenue
37 shall provide information and guidance to taxpayers relating to the calculation of the credit. The
38 department may make the information and guidance available electronically or otherwise.

39 (8) The Department of Revenue may adopt rules specifying the manner for issuing refunds under
40 this section to taxpayers who filed returns for the tax year on which the credit is computed but who
41 are not required to file returns for the year in which the credit could be claimed.

42 **SECTION 5.** ORS 291.357 is amended to read:

43 291.357. (1) As used in this section, "general governmental purposes" means:

44 (a) Those activities defined as governmental activities under the accounting standards
45 promulgated by the Governmental Accounting Standards Board of the Financial Accounting Foun-

1 dation that are in effect on August 10, 2001; and

2 (b) Post-secondary educational activities that are partially funded by student tuition and fees.

3 (2) Each biennium, state governmental appropriations for general governmental purposes shall
 4 be no greater than eight percent of projected personal income in Oregon for the same biennium.
 5 Projected personal income shall be based on the United States Department of Commerce projections
 6 used by the [*Oregon Department of Administrative Services*] **State Treasurer** in the last [*forecast*]
 7 **quarterly revenue estimate** given to the Legislative Assembly before adjournment sine die of the
 8 odd-numbered year regular session on which the [*printed,*] **legislatively** adopted budget, **as defined**
 9 **in ORS 291.002**, is based.

10 (3) For purposes of this section, the following are considered to be appropriations:

11 (a) An authorization, given by law, to expend moneys in a biennium;

12 (b) A limitation, imposed by law, on the expenditure in a biennium of moneys that are contin-
 13 uously appropriated; and

14 (c) An estimate of amounts of moneys that are continuously appropriated that will be spent in
 15 a biennium without limitation.

16 (4) The following appropriations are not subject to the limitation on appropriations contained
 17 in this section:

18 (a) Appropriations for the construction or acquisition of assets that are financed by state bonds,
 19 certificates of participation or other forms of borrowing.

20 (b) Appropriations of moneys received directly or indirectly from the federal government.

21 (c) Appropriations for fee remission programs of public universities listed in ORS 352.002.

22 (d) Appropriations of moneys voluntarily donated to a state agency.

23 (e) Appropriations of moneys from revenue increases or new revenue sources if the increases
 24 or sources result from approval of a measure by the people at an election held on or after August
 25 10, 2001.

26 (f) Appropriations to fund new programs or to increase funding for existing programs if the need
 27 for new or increased funding results from approval of a measure by the people at an election held
 28 on or after August 10, 2001.

29 (5) The limitation on appropriations established by this section may be exceeded for a biennium
 30 if the Governor declares an emergency and three-fifths of the members serving in each house of the
 31 Legislative Assembly affirmatively vote to exceed the limitation for the biennium.

32 **SECTION 6.** ORS 314.840 is amended to read:

33 314.840. (1) The Department of Revenue may:

34 (a) Furnish any taxpayer, representative authorized to represent the taxpayer under ORS 305.230
 35 or person designated by the taxpayer under ORS 305.193, upon request of the taxpayer, represen-
 36 tative or designee, with a copy of the taxpayer's income tax return filed with the department for
 37 any year, or with a copy of any report filed by the taxpayer in connection with the return, or with
 38 any other information the department considers necessary.

39 (b) Publish lists of taxpayers who are entitled to unclaimed tax refunds.

40 (c) Publish statistics so classified as to prevent the identification of income or any particulars
 41 contained in any report or return.

42 (d) Disclose a taxpayer's name, address, telephone number, refund amount, amount due, Social
 43 Security number, employer identification number or other taxpayer identification number to the ex-
 44 tent necessary in connection with collection activities or the processing and mailing of correspond-
 45 ence or of forms for any report, return or claim required in the administration of ORS 310.630 to

1 310.706, any local tax under ORS 305.620, or any law imposing a tax upon or measured by net in-
 2 come.

3 (2) The department also may disclose and give access to information described in ORS 314.835
 4 to:

5 (a) The Governor of the State of Oregon or the authorized representative of the Governor with
 6 respect to an individual who is designated as being under consideration for appointment or reap-
 7 pointment to an office or for employment in the office of the Governor. The information disclosed
 8 shall be confined to whether the individual:

9 (A) Has filed returns with respect to the taxes imposed by ORS chapter 316 for those of not
 10 more than the three immediately preceding years for which the individual was required to file an
 11 Oregon individual income tax return.

12 (B) Has failed to pay any tax within 30 days from the date of mailing of a deficiency notice or
 13 otherwise respond to a deficiency notice within 30 days of its mailing.

14 (C) Has been assessed any penalty under the Oregon personal income tax laws and the nature
 15 of the penalty.

16 (D) Has been or is under investigation for possible criminal offenses under the Oregon personal
 17 income tax laws. Information disclosed pursuant to this paragraph shall be used only for the purpose
 18 of making the appointment, reappointment or decision to employ or not to employ the individual in
 19 the office of the Governor.

20 (b) An officer or employee of the **State Treasurer or the** Oregon Department of Administrative
 21 Services duly authorized or employed to prepare revenue estimates, or a person contracting with the
 22 **State Treasurer or the** Oregon Department of Administrative Services to prepare revenue esti-
 23 mates, in the preparation of revenue estimates required **under section 3 of this 2015 Act, required**
 24 for the Governor's budget under ORS 291.201 to 291.226, or required for submission to the Emer-
 25 gency Board or the Joint Interim Committee on Ways and Means, or if the Legislative Assembly is
 26 in session, to the Joint Committee on Ways and Means, and to the Legislative Revenue Officer or
 27 Legislative Fiscal Officer under ORS 291.342, 291.348 and 291.445. The Department of Revenue shall
 28 disclose and give access to the information described in ORS 314.835 for the purposes of this para-
 29 graph only if:

30 (A) The request for information is made in writing, specifies the purposes for which the request
 31 is made and is signed by an authorized representative of the **State Treasurer or the** Oregon De-
 32 partment of Administrative Services. The form for request for information shall be prescribed by the
 33 Oregon Department of Administrative Services and approved by the Director of the Department of
 34 Revenue.

35 (B) The officer, employee or person receiving the information does not remove from the premises
 36 of the Department of Revenue any materials that would reveal the identity of a personal or corpo-
 37 rate taxpayer.

38 (c) The Commissioner of Internal Revenue or authorized representative, for tax administration
 39 and compliance purposes only.

40 (d) For tax administration and compliance purposes, the proper officer or authorized represen-
 41 tative of any of the following entities that has or is governed by a provision of law that meets the
 42 requirements of any applicable provision of the Internal Revenue Code as to confidentiality:

43 (A) A state;

44 (B) A city, county or other political subdivision of a state;

45 (C) The District of Columbia; or

1 (D) An association established exclusively to provide services to federal, state or local taxing
2 authorities.

3 (e) The Multistate Tax Commission or its authorized representatives, for tax administration and
4 compliance purposes only. The Multistate Tax Commission may make the information available to
5 the Commissioner of Internal Revenue or the proper officer or authorized representative of any
6 governmental entity described in and meeting the qualifications of paragraph (d) of this subsection.

7 (f) The Attorney General, assistants and employees in the Department of Justice, or other legal
8 representative of the State of Oregon, to the extent the department deems disclosure or access
9 necessary for the performance of the duties of advising or representing the department pursuant to
10 ORS 180.010 to 180.240 and the tax laws of this state.

11 (g) Employees of the State of Oregon, other than of the Department of Revenue or Department
12 of Justice, to the extent the department deems disclosure or access necessary for such employees
13 to perform their duties under contracts or agreements between the department and any other de-
14 partment, agency or subdivision of the State of Oregon, in the department's administration of the
15 tax laws.

16 (h) Other persons, partnerships, corporations and other legal entities, and their employees, to
17 the extent the department deems disclosure or access necessary for the performance of such others'
18 duties under contracts or agreements between the department and such legal entities, in the
19 department's administration of the tax laws.

20 (i) The Legislative Revenue Officer or authorized representatives upon compliance with ORS
21 173.850. Such officer or representative shall not remove from the premises of the department any
22 materials that would reveal the identity of any taxpayer or any other person.

23 (j) The Department of Consumer and Business Services, to the extent the department requires
24 such information to determine whether it is appropriate to adjust those workers' compensation
25 benefits the amount of which is based pursuant to ORS chapter 656 on the amount of wages or
26 earned income received by an individual.

27 (k) Any agency of the State of Oregon, or any person, or any officer or employee of such agency
28 or person to whom disclosure or access is given by state law and not otherwise referred to in this
29 section, including but not limited to the Secretary of State as Auditor of Public Accounts under
30 section 2, Article VI of the Oregon Constitution; the Department of Human Services pursuant to
31 ORS 314.860 and 412.094; the Division of Child Support of the Department of Justice and district
32 attorney regarding cases for which they are providing support enforcement services under ORS
33 25.080; the State Board of Tax Practitioners, pursuant to ORS 673.710; and the Oregon Board of
34 Accountancy, pursuant to ORS 673.415.

35 (L) The Director of the Department of Consumer and Business Services to determine that a
36 person complies with ORS chapter 656 and the Director of the Employment Department to determine
37 that a person complies with ORS chapter 657, the following employer information:

38 (A) Identification numbers.

39 (B) Names and addresses.

40 (C) Inception date as employer.

41 (D) Nature of business.

42 (E) Entity changes.

43 (F) Date of last payroll.

44 (m) The Director of the Oregon Health Authority to determine that a person has the ability to
45 pay for care that includes services provided by the Blue Mountain Recovery Center or the Oregon

1 State Hospital or the Oregon Health Authority to collect any unpaid cost of care as provided by
2 ORS chapter 179.

3 (n) Employees of the Employment Department to the extent the Department of Revenue deems
4 disclosure or access to information on a combined tax report filed under ORS 316.168 is necessary
5 to performance of their duties in administering the tax imposed by ORS chapter 657.

6 (o) The State Fire Marshal to assist the State Fire Marshal in carrying out duties, functions and
7 powers under ORS 453.307 to 453.414, the employer or agent name, address, telephone number and
8 standard industrial classification, if available.

9 (p) Employees of the Department of State Lands for the purposes of identifying, locating and
10 publishing lists of taxpayers entitled to unclaimed refunds as required by the provisions of chapter
11 694, Oregon Laws 1993. The information shall be limited to the taxpayer's name, address and the
12 refund amount.

13 (q) In addition to the disclosure allowed under ORS 305.225, state or local law enforcement
14 agencies to assist in the investigation or prosecution of the following criminal activities:

15 (A) Mail theft of a check, in which case the information that may be disclosed shall be limited
16 to the stolen document, the name, address and taxpayer identification number of the payee, the
17 amount of the check and the date printed on the check.

18 (B) The counterfeiting, forging or altering of a check submitted by a taxpayer to the Department
19 of Revenue or issued by the Department of Revenue to a taxpayer, in which case the information
20 that may be disclosed shall be limited to the counterfeit, forged or altered document, the name, ad-
21 dress and taxpayer identification number of the payee, the amount of the check, the date printed
22 on the check and the altered name and address.

23 (r) The United States Postal Inspection Service or a federal law enforcement agency, including
24 but not limited to the United States Department of Justice, to assist in the investigation of the fol-
25 lowing criminal activities:

26 (A) Mail theft of a check, in which case the information that may be disclosed shall be limited
27 to the stolen document, the name, address and taxpayer identification number of the payee, the
28 amount of the check and the date printed on the check.

29 (B) The counterfeiting, forging or altering of a check submitted by a taxpayer to the Department
30 of Revenue or issued by the Department of Revenue to a taxpayer, in which case the information
31 that may be disclosed shall be limited to the counterfeit, forged or altered document, the name, ad-
32 dress and taxpayer identification number of the payee, the amount of the check, the date printed
33 on the check and the altered name and address.

34 (s) The United States Financial Management Service, for purposes of facilitating the offsets de-
35 scribed in ORS 305.612.

36 (t) A municipal corporation of this state for purposes of assisting the municipal corporation in
37 the administration of a tax of the municipal corporation that is imposed on or measured by income,
38 wages or net earnings from self-employment. Any disclosure under this paragraph may be made only
39 pursuant to a written agreement between the Department of Revenue and the municipal corporation
40 that ensures the confidentiality of the information disclosed.

41 (u) A consumer reporting agency, to the extent necessary to carry out the purposes of ORS
42 314.843.

43 (v) The Public Employees Retirement Board, to the extent necessary to carry out the purposes
44 of ORS 238.372 to 238.384, and to any public employer, to the extent necessary to carry out the
45 purposes of ORS 237.635 (3) and 237.637 (2).

1 (3)(a) Each officer or employee of the department and each person described or referred to in
 2 subsection (2)(a), (b), (f) to (L) or (n) to (q) of this section to whom disclosure or access to the tax
 3 information is given under subsection (2) of this section or any other provision of state law, prior
 4 to beginning employment or the performance of duties involving such disclosure or access, shall be
 5 advised in writing of the provisions of ORS 314.835 and 314.991, relating to penalties for the vio-
 6 lation of ORS 314.835, and shall as a condition of employment or performance of duties execute a
 7 certificate for the department, in a form prescribed by the department, stating in substance that the
 8 person has read these provisions of law, that the person has had them explained and that the person
 9 is aware of the penalties for the violation of ORS 314.835.

10 (b) The disclosure authorized in subsection (2)(r) of this section shall be made only after a
 11 written agreement has been entered into between the Department of Revenue and the person de-
 12 scribed in subsection (2)(r) of this section to whom disclosure or access to the tax information is
 13 given, providing that:

14 (A) Any information described in ORS 314.835 that is received by the person pursuant to sub-
 15 section (2)(r) of this section is confidential information that may not be disclosed, except to the ex-
 16 tent necessary to investigate or prosecute the criminal activities described in subsection (2)(r) of
 17 this section;

18 (B) The information shall be protected as confidential under applicable federal and state laws;
 19 and

20 (C) The United States Postal Inspection Service or the federal law enforcement agency shall
 21 give notice to the Department of Revenue of any request received under the federal Freedom of In-
 22 formation Act, 5 U.S.C. 552, or other federal law relating to the disclosure of information.

23 (4) The Department of Revenue may recover the costs of furnishing the information described
 24 in subsection (2)(L), (m) and (o) to (q) of this section from the respective agencies.

25 **SECTION 7. (1) Sections 1 to 3 of this 2015 Act and the amendments to ORS 291.349,**
 26 **291.357 and 314.840 by sections 4 to 6 of this 2015 Act become operative on January 1, 2016,**
 27 **and apply to measures reported out of committees of the Legislative Assembly, and to esti-**
 28 **mates of revenues and economic forecasts required, on or after January 1, 2016.**

29 **(2) The State Treasurer, the Oregon Department of Administrative Services, the Legis-**
 30 **lative Revenue Officer, the Legislative Fiscal Officer and the Department of Revenue may**
 31 **take any action prior to January 1, 2016, that is necessary to allow the State Treasurer, the**
 32 **Oregon Department of Administrative Services, the Legislative Revenue Officer, the Legis-**
 33 **lative Fiscal Officer and the Department of Revenue to exercise, on and after January 1,**
 34 **2016, all the duties, functions and powers conferred on the State Treasurer, the Oregon De-**
 35 **partment of Administrative Services, the Legislative Revenue Officer, the Legislative Fiscal**
 36 **Officer and the Department of Revenue by sections 1 to 3 of this 2015 Act and the amend-**
 37 **ments to ORS 291.349, 291.357 and 314.840 by sections 4 to 6 of this 2015 Act.**

38 **SECTION 8. This 2015 Act being necessary for the immediate preservation of the public**
 39 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
 40 **on its passage.**