

Senate Bill 1521

Sponsored by Senator COURTNEY (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**.

Authorizes mass transit district to impose tax on employees of employers within district if district imposes excise tax on those employers. Restricts use of employee tax revenue to enhancing frequency of bus service, acquisition of buses, bus service expansion or maintenance and operations of buses. Applies to tax reporting periods beginning on or after January 1, 2017.

Authorizes municipal transit agencies to levy taxes as authorized for mass transit districts. Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to taxation; creating new provisions; amending ORS 18.854, 267.260, 267.300, 267.385 and
3 267.615; and prescribing an effective date.

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

5 **SECTION 1.** ORS 267.385 is amended to read:

6 267.385. (1) To carry out the powers granted by ORS 267.010 to 267.390, a district may by ordi-
7 nance impose an excise tax on every employer equal to not more than eight-tenths of one percent
8 of the wages paid **by the employer** with respect to the employment of individuals. For the same
9 purposes, a district may by ordinance impose a tax on each individual equal to not more than
10 eight-tenths of one percent of the individual's net earnings from self-employment.

11 **(2) If a district imposes a tax under subsection (1) of this section, the district may by**
12 **ordinance impose a tax on every employee of each employer that is subject to the tax under**
13 **subsection (1) of this section equal to 0.185 percent of the wages paid with respect to the**
14 **employee's employment.**

15 **(3) If a district imposes a tax under subsection (2) of this section, each employer shall**
16 **make a deduction from the wages of each employee described in subsection (2) of this section**
17 **in the amount of the tax owed by the employee under subsection (2) of this section. An em-**
18 **ployer may not make a deduction from an employee's wages for any other amount of tax**
19 **imposed under this section.**

20 **(4) Every employer required to collect taxes imposed under this section is deemed to hold**
21 **the taxes in trust for the district imposing the tax. An employee for whom taxes are due**
22 **under subsection (2) of this section is irrebuttably presumed to have paid the tax imposed**
23 **under subsection (2) of this section if the taxes have been deducted from the employee's**
24 **wages.**

25 *[(2) No employer shall make a deduction from the wages of an employee to pay all or any portion*
26 *of a tax imposed under this section.]*

27 *[(3)]* **(5)** The provisions of ORS 305.620 are applicable to collection, enforcement, administration
28 and distribution of a tax imposed under this section.

29 *[(4)]* **(6)** At any time an employer or individual fails to remit the amount of taxes when due under

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 [an ordinance of the district board imposing a tax under] this section, the Department of Revenue
 2 may enforce collection by the issuance of a distraint warrant for the collection of the delinquent
 3 amount and all penalties, interest and collection charges accrued thereon. Such warrant shall be
 4 issued and may be enforced in the same manner and have the same force and effect as prescribed
 5 with respect to warrants for the collection of delinquent state income taxes.

6 [(5)] (7) Any ordinance adopted under subsection (1) of this section shall require an individual
 7 having net earnings from self-employment from activity both within and without the district taxable
 8 by the State of Oregon to allocate and apportion such net earnings to the district in the manner
 9 required for allocation and apportionment of income under ORS 314.280 and 314.605 to 314.675. Such
 10 ordinance shall give the individual the option of apportioning income based on a single factor des-
 11 ignated by the ordinance.

12 [(6)] (8) Any ordinance adopted under subsection (1) of this section with respect to net earnings
 13 from self-employment may impose a tax for a taxable year measured by each individual's net
 14 earnings from self-employment for the prior taxable year, whether such prior taxable year begins
 15 before or after November 1, 1981, or such ordinance.

16 [(7)] (9) Any ordinance imposing a tax authorized by subsection (1) of this section shall not apply
 17 to any business, trade, occupation or profession upon which a tax is imposed under ORS 267.360.

18 [(8)] (10) The district board may not adopt an ordinance increasing a tax authorized by sub-
 19 section (1) of this section unless the board makes a finding that the economy in the district has re-
 20 covered to an extent sufficient to warrant the increase in tax. In making the finding, the board shall
 21 consider regional employment and income growth.

22 **SECTION 2.** ORS 267.300 is amended to read:

23 267.300. (1) Subject to restrictions in the Oregon Constitution, a district board may finance
 24 construction, acquisition, purchase, lease, operation and maintenance of a mass transit system and
 25 related facilities for the purposes authorized under ORS 267.010 to 267.390 by:

26 (a) Levy of ad valorem taxes under ORS 267.305.

27 (b) Service charges and user fees collected under ORS 267.320.

28 (c) Use of the revolving fund authorized under ORS 267.310.

29 (d) Sale of bonds under ORS 267.330 to 267.345.

30 (e) Levy of business license fees under ORS 267.360.

31 (f) Levy of a tax measured by net income under ORS 267.370.

32 (g) Levy of [a tax] **taxes** measured by [employer payrolls] **wages paid with respect to em-**
 33 **ployment** under ORS 267.380, 267.385 and 267.420.

34 (h) Use of funds accepted under ORS 267.390.

35 (i) Short-term borrowings under ORS 267.400.

36 (j) Levy of a tax measured by net earnings from self-employment under ORS 267.380 and 267.385.

37 (k) Any combination of the provisions of paragraphs (a) to (j) of this subsection.

38 (2) All or any part of the funds raised or received by the district under subsection (1)(a) to (k)
 39 of this section may be expended by the district for the purpose of financing the construction, re-
 40 construction, improvement, repair, maintenance, operation and use of the primary transit supportive
 41 system. However, only those funds raised or received by the district that are restricted by the
 42 Oregon Constitution for the purpose of financing the construction, reconstruction, operation and use
 43 of public highways, roads, streets and roadside rest areas may be expended by the district for the
 44 secondary transit supportive system. As used in this subsection:

45 (a) "Transit supportive system" means those facilities in any county in which a district operates

1 that constitute the surface transportation system in the county, including highways, roads, streets,
2 roadside rest areas, park-and-ride stations, transfer stations, parking lots, malls and skyways.

3 (b) "Primary transit supportive system" means those facilities upon which or adjacent to which
4 the district physically operates.

5 (c) "Secondary transit supportive system" means the remainder of those facilities that constitute
6 the surface transportation system, but over which the district's operation or facilities are not phys-
7 ically present.

8 **SECTION 3.** ORS 267.615 is amended to read:

9 267.615. (1) For the purpose of performing any of the powers conferred by ORS 267.510 to
10 267.650, a transportation district may use any of the following methods of financing:

11 (a) Service charges and user fees collected under ORS 267.570 (1)(d).

12 (b) Levy of ad valorem taxes under ORS 267.620.

13 (c) Use of a revolving fund as authorized for mass transit districts under ORS 267.310.

14 (d) Sale of bonds under ORS 267.630 and 267.640.

15 (e) Levy of business license fees as authorized for mass transit districts under ORS 267.360.

16 (f) Levy of a tax measured by net income as authorized for mass transit districts under ORS
17 267.370.

18 (g) Levy of [*a tax*] **taxes** measured by [*employer payrolls*] **wages paid with respect to em-**
19 **ployment** as authorized for mass transit districts under ORS 267.380 and 267.385 (1) and (2).

20 (h) Acceptance and use of any contributions or loans from the United States, without limitation
21 by any other provision of ORS 267.510 to 267.650 requiring approval of indebtedness.

22 (i) Any combination of the provisions of paragraphs (a) to (h) of this subsection.

23 (2) A district shall not use any method of financing authorized under subsection (1)(c) to (g) of
24 this section without first obtaining authorization at a properly called election held for that purpose.

25 **SECTION 4.** ORS 267.260 is amended to read:

26 267.260. (1) As used in this section, "withdrawal date" means the effective date of an ordinance
27 approving withdrawal of an affected area under ORS 267.250 to 267.263.

28 (2) An ordinance approving the withdrawal of an affected area under ORS 267.250 to 267.263
29 shall take effect on the first day of January next following the date which is 30 days after the
30 adoption of the ordinance.

31 (3) Commencing immediately upon the withdrawal date and notwithstanding any other provision
32 of law, the rate of each tax imposed by the district shall automatically be increased to a rate equal
33 to the rate determined by dividing the rate at which such tax was levied immediately prior to the
34 withdrawal date by a fraction, not more than one, which is equal to the total revenue derived from
35 such tax by the district for the calendar year preceding the year in which the withdrawal ordinance
36 is adopted attributable to the area of the district other than the withdrawn affected area divided
37 by the total revenue derived from such tax by the district for the same period.

38 (4) If the tax rates required under subsection (3) of this section do not produce tax revenues
39 sufficient to enable the district to make the annual or semiannual payments, when due, and other-
40 wise satisfy the requirements of the bonded or other indebtedness of the district incurred prior to
41 the withdrawal, the district may increase the rate of each tax to a rate that produces revenues
42 sufficient to enable the district to make the annual or semiannual payments, when due, and other-
43 wise satisfy the requirements of such indebtedness.

44 (5) The district board shall determine rates in accordance with the formula prescribed by sub-
45 section (3) of this section and adopt the rates as part of the ordinance approving the withdrawal of

1 the affected area. Any such determination and adoption shall be final and conclusive unless it is
 2 shown to be arbitrary and capricious.

3 (6) If a district adopts an ordinance that increases the rate of an excise tax described in ORS
 4 267.385 (1), the increase shall be adjusted as prescribed in subsection (3) of this section to take into
 5 account the withdrawal of an affected area that occurred or occurs at any time after the date the
 6 district first imposed any taxes pursuant to ORS 267.385 (1).

7 **SECTION 5. Section 8 of this 2016 Act and the amendments to ORS 267.300, 267.385 and**
 8 **267.615 by sections 1, 2 and 3 of this 2016 Act apply to tax reporting periods beginning on or**
 9 **after January 1, 2017.**

10 **SECTION 6. Section 7 of this 2016 Act is added to and made a part of ORS 267.010 to**
 11 **267.390.**

12 **SECTION 7. Following the payment of any refunds of tax otherwise due, revenues from**
 13 **the tax imposed under ORS 267.385 (2) are dedicated to and may be expended by a mass**
 14 **transit district only on:**

- 15 (1) **Enhancing the frequency of bus service;**
- 16 (2) **Acquisition of buses;**
- 17 (3) **Bus service expansion; or**
- 18 (4) **Maintenance and operations of buses.**

19 **SECTION 8. (1) As used in this section, “municipal transit agency” means a municipal**
 20 **agency or department that is authorized to transport people by bus or rail and that provides**
 21 **to the public general transportation services, other than school, charter or sightseeing**
 22 **transportation services, on a regular and continuing basis.**

23 **(2) The governing body of a municipality that operates a municipal transit agency may**
 24 **levy taxes as authorized for mass transit districts under ORS 267.385 (1). If the municipality**
 25 **imposes a tax as described in ORS 267.385 (1), the municipality may impose a tax as described**
 26 **in ORS 267.385 (2). Taxes levied under this section must be used to fund the operations or**
 27 **acquisition of assets of the municipal transit agency but are not subject to section 7 of this**
 28 **2016 Act.**

29 **SECTION 9.** ORS 18.854 is amended to read:

30 18.854. (1) Any state agency authorized to issue warrants to collect taxes and debts owed to the
 31 State of Oregon, including but not limited to warrants issued pursuant to ORS 179.655, 184.644,
 32 267.385, 293.250, 314.430, 316.207, 320.080, 321.570, 323.390, 411.703, 651.065, 657.396, 657.642, 657.646,
 33 705.175 and 825.504 **and section 8 of this 2016 Act**, or any county tax collector authorized to issue
 34 warrants to collect taxes and debts owed to the county pursuant to ORS 311.625, may garnish
 35 property of a debtor in the possession, control or custody of a person other than the debtor by de-
 36 livering to the person all of the following:

- 37 (a) A notice of garnishment;
- 38 (b) A warrant, or a true copy of a warrant;
- 39 (c) The items specified in ORS 18.650 (1)(b) to (d); and
- 40 (d) Any garnishee’s search fee payable as provided in ORS 18.790.

41 (2) A notice of garnishment may be issued by any person designated by the state agency or by
 42 the county tax collector. A warrant need not be recorded in the County Clerk Lien Record as a
 43 condition of issuing a notice of garnishment under the provisions of this section. The provisions of
 44 ORS 18.800 do not apply to a notice of garnishment.

45 (3) If any of the items described in subsection (1) of this section are not delivered to the

1 garnishee, a notice of garnishment shall not be effective to garnish any property of the debtor, and
2 the garnishee shall not be required to respond to the garnishment and may proceed to deal with any
3 property of the debtor as though the notice of garnishment had not been issued.

4 (4)(a) Notwithstanding ORS 18.652, but subject to paragraph (c) of this subsection, a notice of
5 garnishment and the other items required by subsection (1) of this section may be delivered in per-
6 son to the garnishee by any employee of the state agency or of the county tax collector who is au-
7 thorized by the agency or the county to deliver the notice of garnishment, may be mailed to the
8 garnishee by first class or certified mail or may be sent to the garnishee by other means if the
9 garnishee has agreed to a different delivery method.

10 (b) An employee who delivers documents under paragraph (a) of this subsection need not be
11 covered by the errors and omissions insurance required in ORS 18.652.

12 (c) A state agency or a county may not seek sanctions against a noncomplying garnishee under
13 ORS 18.775 unless the notice of garnishment and the other items required by subsection (1) of this
14 section are personally delivered to the garnishee under paragraph (a) of this subsection or mailed
15 to the garnishee by certified mail.

16 (5) Notwithstanding any provision of ORS 18.600 to 18.850, a debt calculation form need not be
17 prepared or delivered for any notice of garnishment.

18 (6) Notwithstanding ORS 18.792, the duty of a garnishee to deliver any property of the debtor
19 that may be contained in a safe deposit box that is in the garnishee's possession, control or custody
20 at the time of delivery of the notice of garnishment to the garnishee is conditioned upon the state
21 agency or the county tax collector first paying to the garnishee, in addition to the search fee pro-
22 vided for in ORS 18.790, all reasonable costs incurred by the garnishee in gaining entry to the safe
23 deposit box. The costs shall be paid to the garnishee by the state agency or the county tax collector
24 at least five days before the date the state agency or the county tax collector takes possession of
25 the property in the safe deposit box. If the state agency or the county tax collector fails to pay such
26 costs to the garnishee within 20 days after the delivery of the garnishee response, the garnishment
27 shall not be effective to garnish any property of the debtor that may be contained in the safe deposit
28 box and the garnishee may proceed to deal with the safe deposit box and its contents as though the
29 notice of garnishment had not been issued. Nothing in this subsection limits the rights of a state
30 agency or county tax collector to reach the contents of any safe deposit box in any manner other-
31 wise provided by law.

32 (7) Except as provided in this section and ORS 18.855 and 18.857, all provisions of ORS 18.600
33 to 18.850 apply to notices of garnishment. The state agency or county tax collector shall modify the
34 forms provided in ORS 18.600 to 18.850 as necessary to allow use of those forms for notices of
35 garnishment. The form of the notice of garnishment must clearly indicate that the document is a
36 notice of garnishment and must reflect the date of all warrants on which the notice of garnishment
37 is based.

38 (8) The Attorney General may adopt model forms for notices of garnishment and other docu-
39 ments issued by state agencies and county tax collectors under this section and ORS 18.855 and
40 18.857. There is a presumption, as described in ORS 40.120, that any state agency or county tax
41 collector that uses a model form adopted by the Attorney General under this subsection has com-
42 plied with the requirements of ORS 18.600 to 18.850, and with the provisions of this section and ORS
43 18.855 and 18.857, with respect to the form of notices of garnishment.

44 **SECTION 10. This 2016 Act takes effect on the 91st day after the date on which the 2016**
45 **regular session of the Seventy-eighth Legislative Assembly adjourns sine die.**

