

Example 3:

# Agency Fiscal Impact Statements

## No Fiscal

# House Bill 4173

Sponsored by COMMITTEE ON RULES

## 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.

Modifies requirements for primary, general and special election ballots.  
Declares emergency, effective on passage.

### A BILL FOR AN ACT

1  
2 Relating to the printing of official election ballots; creating new provisions; amending ORS 254.115  
3 and 254.135; and declaring an emergency.

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

5 **SECTION 1.** ORS 254.135 is amended to read:

6 254.135. (1) The official general or special election ballot shall be styled "Official Ballot" and  
7 shall state:

8 (a) The name of the county for which it is intended.

9 (b) The date of the election.

10 (c) The names of all candidates for offices to be filled at the election whose nominations have  
11 been made and accepted and who have not died, withdrawn or become disqualified. The ballot may  
12 not contain the name of any other person.

13 (d) The number, ballot title and financial estimates under ORS 250.125 of any measure to be  
14 voted on at the election.

15 (2) The names of candidates for President and Vice President of the United States shall be  
16 printed in groups together, under their political party designations. The names of the electors may  
17 not be printed on the general election ballot. A vote for the candidates for President and Vice  
18 President is a vote for the group of presidential electors supporting those candidates and selected  
19 as provided by law. The general election ballot shall state that electors of President and Vice  
20 President are being elected and that a vote for the candidates for President and Vice President shall  
21 be a vote for the electors supporting those candidates.

22 (3)(a) The name of each candidate nominated shall be printed [*upon*] **on** the ballot in but one  
23 place, without regard to how many times the candidate may have been nominated. The name of a  
24 political party, or names of political parties, shall be [*added opposite*] **printed with** the name of a  
25 candidate for other than nonpartisan office according to the following rules:

26 (A) For a candidate not affiliated with a political party who is nominated by a minor political  
27 party, the name of the minor political party shall be [*added opposite*] **printed with** the name of the  
28 candidate;

29 (B) For a candidate not affiliated with a political party who is nominated by more than one  
30 minor political party, the names of not more than three minor political parties selected by the can-  
31 didate shall be [*added opposite*] **printed with** the name of the candidate;

**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 (C) For a candidate who is a member of a political party who is nominated by a political party  
 2 of which the candidate is not a member, the name of the political party that nominated the candi-  
 3 date shall be *[added opposite]* **printed with** the name of the candidate;

4 (D) For a candidate who is a member of a political party who is nominated by more than one  
 5 political party of which the candidate is not a member, the names of not more than three political  
 6 parties selected by the candidate shall be *[added opposite]* **printed with** the name of the candidate;

7 (E) For a candidate who is nominated only by a political party of which the candidate is a  
 8 member, the name of the political party of which the candidate is a member shall be *[added*  
 9 *opposite]* **printed with** the name of the candidate; and

10 (F) For a candidate who is nominated by a political party of which the candidate is a member  
 11 and by any political party or parties of which the candidate is not a member, the name of the poli-  
 12 tical party of which the candidate is a member and the names of not more than two other political  
 13 parties selected by the candidate shall be *[added opposite]* **printed with** the name of the candidate.

14 (b) If a candidate is required to select the name of a political party to be *[added]* **printed** on the  
 15 ballot under paragraph (a) of this subsection, the candidate shall notify the filing officer of the se-  
 16 lection not later than the 61st day before the day of the election.

17 (c) The word "incumbent" shall *[follow]* **be printed with** the name of each candidate for the  
 18 Supreme Court, Court of Appeals, Oregon Tax Court or circuit court who is designated the  
 19 incumbent by the Secretary of State under ORS 254.085.

20 (d) The word "nonaffiliated" shall *[follow]* **be printed with** the name of each candidate who is  
 21 not affiliated with a political party and who is nominated by an assembly of electors or individual  
 22 electors.

23 (e) If two or more candidates for the same office have the same or similar surnames, the location  
 24 of their places of residence shall be printed *[opposite]* **with** their names to distinguish one from an-  
 25 other.

26 **SECTION 2.** ORS 254.115 is amended to read:

27 254.115. (1) The official primary election ballot shall be styled "Official Primary Nominating  
 28 Ballot for the \_\_\_\_\_ Party." and shall state:

29 (a) The name of the county for which it is intended.

30 (b) The date of the primary election.

31 (c) The names of all candidates for nomination at the primary election whose nominating pe-  
 32 titions or declarations of candidacy have been made and filed, and who have not died, withdrawn  
 33 or become disqualified.

34 (d) The names of candidates for election as precinct committeeperson.

35 (e) The names of candidates for the party nomination for President of the United States who  
 36 qualified for the ballot under ORS 249.078.

37 (2) The primary election ballot may include any city, county or nonpartisan office or the number,  
 38 ballot title and financial estimates under ORS 250.125 of any measure.

39 (3) The ballot may not contain the name of any person other than those referred to in sub-  
 40 sections (1) and (2) of this section. The name of each candidate for whom a nominating petition or  
 41 declaration of candidacy has been filed shall be printed on the ballot in but one place. In the event  
 42 that two or more candidates for the same nomination or office have the same or similar surnames,  
 43 the location of their places of residence shall be printed *[opposite]* **with** their names to distinguish  
 44 one from another.

45 **SECTION 3.** The amendments to ORS 254.115 and 254.135 by sections 1 and 2 of this 2012

1 Act apply to ballots for elections held on or after the effective date of this 2012 Act.

2 SECTION 4. This 2012 Act being necessary for the immediate preservation of the public  
3 peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect  
4 on its passage.

5

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*LFO*  
**HB 4173 Notes**

- Modifies requirements for primary, general and special election ballots.
- Declares emergency, effective on passage.

**Section 1, amending 254.135**

- Modifies the placement of political party affiliation throughout general or special election ballots

**Section 2, amending 254.115**

- Modifies the placement of place of residence on primary election ballots when two candidates have the same surname

**Section 3, effective date**

**Section 4, emergency clause**

**Requested FIS**

**SOS**

**Counties**

**2012 Legislative Session**  
**AGENCY FISCAL IMPACT STATEMENT FORM**  
*(See instructions for completing form)*

Please complete this form, and return one copy each to the Legislative Fiscal Office (LFO) and the Budget and Management Division (BAM).

Agency Name: Secretary of State  
Preparer Name/Title: Steve Trout, Director, Elections Division  
Preparer Phone #: 503-986-2339  
Date Submitted: February 20, 2012

Measure #: HB 4173 Version: \_\_\_\_\_

- No fiscal impact**    The absence of an expenditure or revenue (non-tax) impact.  
 **Minimal Impact**    A fiscal impact that can be absorbed with existing agency resources.  
 **Fiscal Impact**    A fiscal impact determined to be greater than a minimal fiscal impact.

Does the proposed legislation impact a program that is part of the November 2011 required reduction option list? *If yes, please describe this impact in the Written Analysis section of the form.*

Yes \_\_\_\_\_ No   x  

The budgetary impact of this bill was reviewed and approved by the Interim Joint Committee on Ways and Means to be recommended to be included in the omnibus budget bill.

Yes \_\_\_\_\_ No   x  

Is the bill anticipated by the Governor's Recommended Budget as a Policy Option Package? *If yes, please identify the Policy Option Package name and number in your written analysis.*

Yes \_\_\_\_\_ No   x  

Does the proposal have a fiscal or revenue mandate effect on cities, counties, or special districts that triggers evaluation under Section 15, Article XI of the Oregon Constitution?

Yes \_\_\_\_\_ No   x  

**AGENCY WRITTEN ANALYSIS:**

*Provide a high-level summary of the general requirements of the bill and what your agency will need to do to comply with the requirements. Identify any ambiguity or other issues related to the measure's language. Identify measure's effective date, and if applicable, operative dates. Summarize the methodology used to make fiscal calculations/determination. See instructions for other considerations.*

There is no fiscal impact to the state by this proposed legislation. The bill simply changes the location of printed abbreviated political party names on official ballots. This will only come into play in November General Elections where candidates may be nominated by up to three political parties.

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Prepared by: Matt Stayner  
Reviewed by: Steve Bender, Laurie Byerly  
Date: 2/22/12

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**Measure Description:**

Modifies requirements for primary, general and special election ballots.

**Government Unit(s) Affected:**

Secretary of State, Counties

**Analysis:**

The proposed legislation has been determined to have

**NO EXPENDITURE IMPACT**

on state or local government.

Example 4:

# Agency Fiscal Impact Statements

## Minimal Fiscal



## Senate Bill 536

Sponsored by Senators HASS, ATKINSON, Representatives CANNON, GILLIAM (Pre-session 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.

Prohibits use of single-use checkout bags except in certain cases. Allows Department of Environmental Quality to impose civil penalty. Prohibits local governments from imposing charges on checkout bags or other bags provided to customers. Repeals statute requiring retail establishments that offer plastic bags to customers to also offer paper bags.

Declares emergency, effective on passage.

### A BILL FOR AN ACT

1  
2 Relating to bags; creating new provisions; amending ORS 459.235 and 459A.115; repealing ORS  
3 459A.695; and declaring an emergency.

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

#### SECTION 1. As used in sections 1 to 4 of this 2011 Act:

5  
6 (1) "Recycled paper checkout bag" means a paper bag made by a manufacturer whose  
7 total production of paper checkout bags in the preceding calendar year averaged at least 40  
8 percent recycled fiber.

9 (2)(a) "Retail establishment" means any store in this state that sells or offers for sale  
10 goods at retail.

11 (b) "Retail establishment" does not mean an establishment where the primary business  
12 is the preparation of food or drink:

13 (A) For consumption by the public;

14 (B) In a form or quantity that is consumable then and there, whether or not it is con-  
15 sumed within the confines of the place where prepared; or

16 (C) In consumable form for consumption outside the place where prepared.

17 (3) "Reusable checkout bag" means a bag with handles that is specifically designed and  
18 manufactured for multiple reuse and is made of:

19 (a) Cloth or other machine-washable fabric; or

20 (b) Durable plastic that is at least 2.25 mils thick.

21 (4)(a) "Single-use checkout bag" means a bag made of paper, plastic or any other mate-  
22 rial that is provided by a retail establishment to a customer at the time of checkout.

23 (b) "Single-use checkout bag" does not mean a bag made of paper, plastic or any other  
24 material that is provided by a retail establishment to a customer at a time other than the  
25 time of checkout.

26 SECTION 2. (1) Except as provided in subsection (2) of this section, a retail establishment  
27 may not provide single-use checkout bags to customers.

28 (2) A retail establishment may:

29 (a) Make reusable checkout bags available for sale to customers.

30 (b) Provide reusable checkout bags at no cost to customers.

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 (c) Provide recycled paper checkout bags at no cost to:
- 2 (A) Customers who use a voucher issued under the Women, Infants and Children Pro-
- 3 gram established in the Oregon Health Authority under ORS 409.600.
- 4 (B) Customers who use an electronic benefits card issued by the Department of Human
- 5 Services.
- 6 (d) Provide recycled paper checkout bags to customers if the retail establishment charges
- 7 not less than five cents for each recycled paper checkout bag.
- 8 (e) Provide single-use checkout bags to customers for items marked with protected
- 9 health information or other confidential information.

10 (3) The Environmental Quality Commission may adopt rules necessary to implement

11 sections 1 to 4 of this 2011 Act.

12 (4) The Department of Environmental Quality may require a retail establishment to

13 provide, within a reasonable time, information necessary to ensure compliance with this

14 section.

15 **SECTION 3.** (1) The Department of Environmental Quality may impose a civil penalty on

16 a person for a violation of section 2 of this 2011 Act.

17 (2) A civil penalty imposed under this section may not exceed \$250.

18 (3) Civil penalties described in this section shall be imposed in the manner provided in

19 ORS 183.745.

20 (4) All penalties recovered under this section shall be paid into the State Treasury and

21 credited to the General Fund and are available for general governmental expenses.

22 **SECTION 4.** A local government, as defined in ORS 174.116, may not impose any tax, fee,

23 assessment, surcharge or other charge on:

- 24 (1) Recycled paper checkout bags;
- 25 (2) Reusable checkout bags;
- 26 (3) Single-use checkout bags; or
- 27 (4) Any other bags made of paper, plastic or other material that are provided by a retail
- 28 establishment to a customer.

29 **SECTION 5.** ORS 459A.695 is repealed.

30 **SECTION 6.** ORS 459.235 is amended to read:

31 459.235. (1) Applications for permits shall be on forms prescribed by the Department of Envi-

32 ronmental Quality. An application shall contain a description of the existing and proposed operation

33 and the existing and proposed facilities at the site, with detailed plans and specifications for any

34 facilities to be constructed. The application shall include a recommendation by each local govern-

35 ment unit having jurisdiction and such other information the department deems necessary in order

36 to determine whether the site and solid waste disposal facilities located thereon and the operation

37 will comply with applicable requirements.

38 (2) The Environmental Quality Commission shall establish a schedule of fees for disposal site

39 permits. The permit fees contained in the schedule shall be based on the anticipated cost of filing

40 and investigating the application, of issuing or denying the requested permit and of an inspection

41 program to determine compliance or noncompliance with the permit.

42 (3) In addition to the fees imposed under subsection (2) of this section, the commission shall

43 establish a schedule of permit fees for the purpose of implementing this section and ORS 90.318,

44 182.375, 279A.125, 279A.155, 279B.025, 279B.240, 279B.270, 279B.280, 459.005, 459.015, 459.247, 459.418,

45 459.995, 459A.005, 459A.010, 459A.020, 459A.030 to 459A.055, 459A.070, 459A.110, 459A.115, 459A.475,

1 459A.480, 459A.500 to 459A.685[ 459A.695] and 459A.750. The fees shall be based on the amount of  
2 solid waste received at the disposal site.

3 (4) Notwithstanding any other fee or surcharge imposed under ORS 459.005 to 459.437 or  
4 459A.005 to 459A.120, for the disposal of solid waste, in order to encourage the use of suitable ma-  
5 terial other than virgin material for daily cover at a disposal site, the only fee that may be charged  
6 for the disposal of substitute material that is also used for daily cover is the permit fee established  
7 under this section.

8 **SECTION 7.** ORS 459A.115 is amended to read:

9 459A.115. (1) From January 1, 1992, to December 31, 1993, the schedule of fees as established  
10 by the Environmental Quality Commission under ORS 459A.110 (1) is increased by 35 cents per ton.  
11 The portion of the fees attributable to the 35 cents per ton increase shall be deposited into the  
12 General Fund and credited to an account of the Department of Environmental Quality. Such moneys  
13 are continuously appropriated to the department to implement the provisions of this section and  
14 ORS 459.005, 459.015, 459.235, 459.247, 459.418, 459.995, 459A.005, 459A.010, 459A.020, 459A.030 to  
15 459A.055, 459A.070, 459A.110, 459A.500 to 459A.685[ 459A.695] and 459A.750.

16 (2) Beginning January 1, 1994, the schedule of fees as established by the commission under ORS  
17 459A.110 is increased by 31 cents per ton and shall be deposited into the General Fund and credited  
18 to an account of the department. Such moneys are continuously appropriated to the department to  
19 implement the provisions described in subsection (1) of this section, excluding ORS 459.418.

20 **SECTION 8.** (1) Except as provided in subsection (2) of this section, sections 1 to 4 of this  
21 2011 Act, the repeal of ORS 459A.695 by section 5 of this 2011 Act and the amendments to  
22 ORS 459.235 and 459A.115 by sections 6 and 7 of this 2011 Act become operative on November  
23 1, 2011.

24 (2) The Environmental Quality Commission may adopt rules before the operative date  
25 specified in subsection (1) of this section, or take any other action before the operative date  
26 specified in subsection (1) of this section, that is necessary to implement, on or after the  
27 operative date specified in subsection (1) of this section, sections 1 to 4 of this 2011 Act, the  
28 repeal of ORS 459A.695 by section 5 of this 2011 Act and the amendments to ORS 459.235 and  
29 459A.115 by sections 6 and 7 of this 2011 Act.

30 (3)(a) Section 4 of this 2011 Act applies to any tax, fee, assessment, surcharge or other  
31 charge imposed before, on or after the operative date specified in subsection (1) of this sec-  
32 tion by a local government on recycled paper checkout bags, reusable checkout bags,  
33 single-use checkout bags and any other bags made of paper, plastic or other material that  
34 are provided by a retail establishment to a customer.

35 (b) Paragraph (a) of this subsection does not affect any tax, fee, assessment, surcharge  
36 or other charge imposed by a local government on recycled paper checkout bags, reusable  
37 checkout bags, single-use checkout bags and any other bags made of paper, plastic or other  
38 material that are provided by a retail establishment to a customer that became due before  
39 the operative date specified in subsection (1) of this section.

40 **SECTION 9.** This 2011 Act being necessary for the immediate preservation of the public  
41 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect  
42 on its passage.

**PROPOSED AMENDMENTS TO  
SENATE BILL 536**

1 On page 1 of the printed bill, delete lines 6 through 8 and insert:

2 “(1) ‘Recycled paper checkout bag’ means a paper bag made by a man-  
3 ufacturer whose total production of paper checkout bags averages at least  
4 40 percent recycled fiber.”.

5 On page 2, line 8, after “bags” insert “at no cost”.

6 Delete lines 10 and 11 and insert:

7 “(f) Provide single-use checkout bags at no cost to customers for fresh  
8 meat or seafood that the retail establishment packs in ice.”.

9 In line 12, delete “(4)” and insert “(3)”.

10 Delete line 16 and insert “a retail establishment for a violation of section  
11 2 of this 2011 Act. Each day a violation occurs at a retail establishment  
12 constitutes a separate violation.”.

13 In line 17, after “\$250” insert “per day”.

14 On page 3, delete lines 20 through 29 and insert:

15 “**SECTION 8.** (1) Except as provided in subsection (2) of this section,  
16 sections 1 to 4 of this 2011 Act, the repeal of ORS 459A.695 by section 5 of  
17 this 2011 Act and the amendments to ORS 459.235 and 459A.115 by sections  
18 6 and 7 of this 2011 Act become operative on January 1, 2012.

19 “(2) The Department of Environmental Quality may take any action be-  
20 fore the operative date specified in subsection (1) of this section that is  
21 necessary to implement, on or after the operative date specified in subsection  
22 (1) of this section, sections 1 to 4 of this 2011 Act, the repeal of ORS 459A.695

1 by section 5 of this 2011 Act and the amendments to ORS 459.235 and  
2 459A.115 by sections 6 and 7 of this 2011 Act.”

3

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**2011 Legislative Session**  
**AGENCY FISCAL IMPACT STATEMENT FORM**  
*(See instructions for completing form)*

Please complete this form, and return one copy each to the Legislative Fiscal Office (LFO) and the Budget and Management Division (BAM).

Agency Name: Department of Environmental Quality  
Preparer Name/Title: Beth Woodrow/Land Quality Fiscal Analyst  
Preparer Phone #: 503-229-6997  
Date Submitted: 4/14/11

Measure #: SB 536 Version: -11 amendment

- |   |  |
|---|--|
| <input type="checkbox"/> <b>No fiscal impact</b>          | The absence of an expenditure or revenue (non-tax) impact.             |
| <input checked="" type="checkbox"/> <b>Minimal Impact</b> | A fiscal impact that can be absorbed with existing agency resources.   |
| <input type="checkbox"/> <b>Fiscal Impact</b>             | A fiscal impact determined to be greater than a minimal fiscal impact. |

Is the bill anticipated by the Governor's Recommended Budget as a Policy Option Package? If yes, please identify the Policy Option Package name and number in your written analysis.

Yes \_\_\_\_\_ No   x  

Does the proposal have a fiscal or revenue mandate effect on cities, counties, or special districts that triggers evaluation under Section 15, Article XI of the Oregon Constitution?

Yes \_\_\_\_\_ No   x  

**AGENCY WRITTEN ANALYSIS:**

**Bill Summary**

SB 536 prohibits retail establishments from providing single-use checkout bags to customers, except when customers are receiving items marked with protected health information or other confidential information. A single use checkout bag is essentially any type of bag provided at checkout (assumed to be at the point of payment) that does not meet the bill's definition of "reusable checkout bag." It allows retailers to provide reusable checkout bags either for sale or at no cost. It also allows retailers to provide recycled paper checkout bags if they charge not less than 5 cents to customers, and they can be provided for free to certain customers. Retail establishments are defined as "any store," except those whose primary business is the preparation of food and drink.

DEQ is authorized to require retail establishments to provide information necessary to ensure compliance with the single-use checkout bag ban.

SB 536 authorizes DEQ to impose a civil penalty, not to exceed \$250, for a violation of the single-use checkout bag ban. Penalties are to be credited to the General Fund. It also prohibits local governments from taxing any type of checkout bag. Finally, it repeals the section of ORS 459A that currently requires retailers to offer a choice of paper or plastic bags, and amends sections of the law that refer to that provision.

The bill as introduced authorizes the Environmental Quality Commission to adopt rules to implement the ban, the imposition of penalties and the local government fee prohibition. The ban and other provisions become operative November 1, 2011.

## **-11 Amendment/Revision**

The -11 amendments changes six elements of the bill:

- It modifies the provision allowing single-use checkout bags to be provided for items marked with protected health or confidential information to be provided "at no cost." (i.e., exempts these from the requirement that retailers charge not less than five cents for these bags)
- It adds another situation in which single-use checkout bags can be provided at no cost, specifically for fresh meat or seafood packed in ice.
- It eliminates the paragraph authorizing the Environmental Quality Commission to adopt rules necessary to implement Sections 1 through 4.
- It clarifies what constitutes a violation for which penalties may be imposed, specifically that DEQ may fine a retail establishment \$250 per day for each day on which requirements of Section 2 are violated.
- It changes the operative date of sections 1 to 4 (and the revisions to existing statute) from November 1, 2011 to January 1, 2012.
- It changes the definition of "recycled paper checkout bag".

The first two provisions simply add to the exceptions allowed to the overall statute and do not impact DEQ's cost of implementation.

The clarification of the penalty section avoids potential effort to interpret the statute, although as noted in our initial fiscal impact statements, we had yet to determine whether that was an issue and had not specifically estimated resources for that purpose. Elimination of the rule-making authorization eliminates part of that effort, although many of the questions we planned to address in rule will still need to be answered and included in guidance to staff and information to retailers. Delaying the operative date of the bill provides more time to prepare the informational materials and to train staff, but does not appreciably change the workload. It also avoids retailers' having to make a change during the holiday season, which could improve initial compliance.

The change in the definition of "recycled paper checkout bag" has the potential to complicate compliance oversight. The bill as introduced provides this definition: "a paper bag made by a manufacturer whose total production of paper checkout bags in the preceding calendar year averaged at least 40 percent recycled fiber." The amendment deletes the phrase "in the preceding calendar year." This opens the question as to the period of time over which production averages are to be calculated. DEQ expects to provide guidance to retailers and manufacturers as to what records should be kept to demonstrate compliance with the recycled content provision. If this amendment is adopted, the guidance would include what the agency believes is a reasonable time period. If violations of the recycled content are suspected, DEQ's would inspect retailer records of paper bag purchases and manufacturer information about recycled content. Without the authority to adopt rules clarifying this definition, however, we would not be able to challenge production averages that the agency believes are not reasonable. DEQ cannot predict whether this is likely to be an issue. If there appeared to be sufficient violations of the legislative intent, DEQ would expect to report the issue in future Legislative sessions and recommend legislative action if appropriate. The impact of this provision is, at this point, indeterminate.

In addition to evaluating the effect of the -11 amendments (eliminating rule-making), this fiscal impact statement also revises our initial estimate of the bill's impact. We have narrowed our assessment of what is necessary under the law, in order to estimate a "least cost" implementation. The assumptions below describe what will and will not be done under this revised plan.

## **Assumptions, Analysis of Resources Required**

### General assumptions:

- We assume that DEQ will receive a large volume of inquiries about this program, because it will impact a large number of retailers and nearly every consumer in the state. It is expected to be the first statewide ban, so there will also be considerable interest from the media and from other state governments. We expect to institute practices to minimize the resources needed to handle these requests, but we still expect inquiry response to be a significant component of DEQ's effort, at least initially.
- Compliance and enforcement will be complaint driven. That is, DEQ will not devote resources to routinely inspecting retail establishments or the records that demonstrate compliance. It will instead provide limited follow-up on reports it receives of possible violations.
- We would develop a compliance and enforcement strategy that would encourage compliance with the law, but minimize use of DEQ resources. Details of the strategy would depend on the types and volume of complaints and a more thorough analysis of what actions would be effective. At this point, we expect that we would not do much follow-up in the first year, to allow time for behavior change to take place. Guidelines would also need to be established as to the type of complaints that would warrant a response, and what that response would be.
- We assume that "retail establishment" includes only stores with fixed locations and therefore would exclude temporary kiosks and farmers' or craft markets. This assumption reduces the number of establishments subject to the law.

### Explanation of resources required:

We have broken the activities to be undertaken in three major groups:

- Program development and implementation. Activities that will take place primarily before the bill's operational date of January 1, 2012.
- Response to inquiries. We expect inquiries to begin essentially upon passage and to continue through the November 1<sup>st</sup> date and beyond, although the volume is likely to drop after the first year or so.
- Compliance and enforcement. Beginning after the operational date, but at very modest levels initially.

A number of DEQ employees would be involved in implementing this bill, especially in the first year. Rather than estimating the hours of effort by each classification and step, we have used a single rate of \$52 per hour (full cost with salary, benefits, service and supplies, and indirect) to evaluate the cost of the tasks below. Total cost of implementation is \$49,400 in 2011-13 and \$31,200 in 2013-15.

### Program development and implementation

Effort would be needed in the following areas:

1. Draft an implementation plan, outlining steps to be undertaken to determine how DEQ will address program implementation needs, such as developing informational materials, handling inquiries of all sorts, training, compliance and enforcement.
2. Resolve implementation policy questions and issues. Examples include: How will we respond to questions from retailers and manufacturers regarding what bags qualify as reusable? Will there be a standard or process for measuring the thickness of reusable bags? What records will retailers be required to maintain to demonstrate compliance?  
We assume that we will need meetings with key representatives of stakeholder groups to assist DEQ with resolving many of the issues.
3. Develop informational materials to support compliance with the bill. DEQ will provide information to retailers on the bill's requirements, exemptions and information required by DEQ and develop materials for bag manufacturers and consumers. We have assumed that we will not mail information to individual retailers or manufacturers, but rather rely on other avenues such as the



internet, trade associations and the media. These efforts would involve drafting communication pieces and Q&As, adding documents to DEQ's web site, some research to determine what institutions could assist, and disseminating the information.

4. Develop and distribute press releases to inform both retailers and the general public of the bill.
5. Develop compliance and enforcement strategy. We would need to plan who would receive complaints, who responds and what action would be taken in response to defined ranges of alleged violation. We assume we would only take potential violations through the enforcement process (warning letters, fines, etc.) in rare cases of egregious violation. We also assume that complaint tracking would be incorporated into existing complaint report systems and would not provide summary statistics on the program.
6. Develop compliance response materials (e.g., standard reminder letters for various types and frequencies of complaints).
7. Develop in-house guidance and other training materials, both for staff who will respond to inquiries and for compliance and enforcement staff.
8. Train staff. We estimate that this would require 1 hour training for fifteen or more employees who routinely respond to public inquiries and, at a minimum, a 2 hour training for approximately six compliance staff.

Total program development and implementation hours/costs:

<u>Biennium</u>	<u>Hours</u>	<u>Cost</u>
2011-13	350	\$18,200
2013-15	0	\$0

#### Response to inquiries

As indicated, we expect a high degree of interest and a large volume of requests for information related to this bill. We expect implementation questions from retailers and bag producers; questions and concerns from consumers and representatives of exempted populations; and other inquiries from the media, Oregon local government, other states and interest groups.

We believe calls will begin with passage of the bill and will remain at a high level through the first year or so of implementation. Many routine inquiries will be handled quickly by reception personnel and are not included in this fiscal estimate. But other calls will require more detailed response. Over the course of the first two years, we estimate an average of between 20 and 25 10-minute calls per week. By the 2013-15 biennium, we estimate the volume will drop to less than half that level.

<u>Biennium</u>	<u>Hours</u>	<u>Cost</u>
2011-13	400	\$20,800
2013-15	150	\$7,800

#### Compliance and enforcement

Compliance and enforcement effort includes receiving and recording complaint information, making a determination as to whether follow-up is appropriate, taking action ranging from sending a letter, making a phone call, or rarely, visiting a retail site. We have assumed that in the first year, we would simply record complaints and would do very little follow-up. In the last seven months of 2011-13 and continuing into 2013-15, we would increase our response, beginning with letter or telephone contacts and moving on to on-site technical assistance and inspections of some retail establishments' records. We estimate we would expend 200 hours on this effort in 2011-13 and 450 hours in 2013-15.

<u>Biennium</u>	<u>Hours</u>	<u>Cost</u>
2011-13	200	\$10,400
2013-15	450	\$23,400

DEQ can absorb this effort in its Solid Waste program, but it will displace other work. During the development and early implementation phase, it will likely delay product stewardship work (developing strategies to address upstream impacts and to select future products). The response to inquiries and compliance work will reduce existing technical assistance provided to solid waste facilities.

**Revenue**

The bill does not provide revenue. The work would be funded by existing solid waste disposal (tipping) fees that support the product stewardship and technical assistance work described above.

# Senate Bill 1508

Sponsored by Senator ATKINSON; Senator HASS (Pre-session 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.

Allows beverage distributors or importers to establish distributor cooperative for certain purposes. Provides that dealer that uses distributor cooperative is not required to return beverage containers to distributor or importer that does not participate in distributor cooperative. Requires distributor cooperative, and distributors and importers that do not participate in distributor cooperative, to provide Oregon Liquor Control Commission with report on beverage container return data each calendar year.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to beverage containers; and declaring an emergency.

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

4 **SECTION 1. Section 2 of this 2012 Act is added to and made a part of ORS 459A.700 to**  
5 **459A.740.**

6 **SECTION 2. (1) Two or more distributors or importers may establish a distributor coop-**  
7 **erative for the purposes of:**

8 (a) **Collecting the refund value of beverage containers as established by ORS 459A.705**  
9 **from distributors or importers and refunding to dealers the amount the dealers paid for the**  
10 **refund value of empty beverage containers;**

11 (b) **Paying the refund value as established by ORS 459A.705 for beverage containers sold**  
12 **in this state; and**

13 (c) **Processing beverage containers sold in this state.**

14 (2) **A distributor cooperative established under this section must service a majority of**  
15 **the dealers in this state.**

16 (3) **If a distributor cooperative is established, a dealer that uses the distributor cooper-**  
17 **ative to redeem and process beverage containers sold in this state is not required to return**  
18 **beverage containers to a distributor or importer that does not participate in the distributor**  
19 **cooperative, provided that the dealer or the distributor cooperative provides an accounting**  
20 **to the distributor or importer of the beverage containers by brand and kind that were dis-**  
21 **tributed by the distributor or importer and subsequently redeemed by the dealer or distrib-**  
22 **utor cooperative.**

23 (4) **Upon receipt of the accounting required by subsection (3) of this section, a distributor**  
24 **or importer that does not participate in the distributor cooperative must pay the refund**  
25 **value of the redeemed beverage containers specified in the accounting to the dealer or dis-**  
26 **tributor cooperative that provided the accounting.**

27 (5)(a) **For purposes of this subsection, beverage container return data is the number of**  
28 **beverage containers that carry a refund value returned in Oregon during the calendar year**

**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 and the number of beverage containers that carry a refund value sold in Oregon during the  
2 calendar year, calculated separately.

3 (b) By July 1 of each calendar year, a distributor cooperative shall provide the Oregon  
4 Liquor Control Commission with a report that lists, in aggregate form for all distributors  
5 and importers that participate in the distributor cooperative, the previous calendar year's  
6 beverage container return data, calculated separately for aluminum, glass and plastic  
7 beverage containers.

8 (c) By July 1 of each calendar year, a distributor or importer that does not participate  
9 in a distributor cooperative shall provide the commission with a report that lists the  
10 distributor's or the importer's beverage container return data for the previous calendar  
11 year, calculated separately for aluminum, glass and plastic beverage containers.

12 (6) The commission may not disclose any return data or other related information pro-  
13 vided by a distributor cooperative to the commission under this section.

14 SECTION 3. The first reports to the Oregon Liquor Control Commission required under  
15 section 2 (5) of this 2012 Act must be filed no later than July 1, 2013, for calendar year 2012.

16 SECTION 4. This 2012 Act being necessary for the immediate preservation of the public  
17 peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect  
18 on its passage.

19

**PROPOSED AMENDMENTS TO  
SENATE BILL 1508**

1 On page 1 of the printed bill, line 2, after “containers;” insert “creating  
2 new provisions; amending ORS 459.992;”.

3 In line 8, delete “as established by” and insert “specified in”.

4 In line 11, delete “as established by” and insert “specified in”.

5 In line 28, delete “that carry a refund value returned” and insert “re-  
6 turned for the refund value specified in ORS 459A.705”.

7 On page 2, line 1, after “value” insert “specified in ORS 459A.705”.

8 In line 6, delete “aluminum,” and after “glass” insert “, metal”.

9 In line 11, delete “aluminum,” and after “glass” insert “, metal”.

10 Delete lines 12 and 13 and insert:

11 “(6)(a) By August 1 of each calendar year, using the beverage container  
12 return data provided in subsection (5)(b) of this section, the Oregon Liquor  
13 Control Commission shall calculate the previous calendar year’s percentage  
14 of beverage containers returned for the refund value specified in ORS  
15 459A.705 for each distributor cooperative. The commission shall carry out the  
16 calculation separately for glass, metal and plastic beverage containers and  
17 shall post the percentages on the commission’s website.

18 “(b) By August 1 of each calendar year, using the beverage container re-  
19 turn data provided in subsection (5)(c) of this section, the commission shall  
20 calculate the previous calendar year’s percentage of beverage containers re-  
21 turned for the refund value specified in ORS 459A.705 for each distributor  
22 or importer that does not participate in a distributor cooperative. The com-

1 mission shall carry out the calculation separately for glass, metal and plastic  
2 beverage containers and shall post the percentages on the commission's  
3 website.

4 “(c) By August 1 of each calendar year, using the beverage container re-  
5 turn data provided in subsection (5)(b) and (c) of this section, the commission  
6 shall calculate as an aggregate the previous calendar year's percentage of  
7 beverage containers returned for the refund value specified in ORS 459A.705  
8 for all distributors and importers in Oregon. The commission shall carry out  
9 the calculation separately for glass, metal and plastic beverage containers  
10 and shall post the aggregate percentages on the commission's website.

11 “(d) Except for the percentages described in paragraphs (a) to (c) of this  
12 subsection, the commission may not disclose any information provided by a  
13 distributor, an importer or a distributor cooperative under subsection (5) of  
14 this section.”

15 After line 15, insert:

16 **“SECTION 4.** ORS 459.992 is amended to read:

17 “459.992. (1) The following are Class A misdemeanors:

18 “(a) Violation of rules or ordinances adopted under ORS 459.005 to 459.105  
19 and 459.205 to 459.385.

20 “(b) Violation of ORS 459.205.

21 “(c) Violation of ORS 459.270.

22 “(d) Violation of ORS 459A.080.

23 “(e) Violation of ORS 459.272.

24 “(2) Each day a violation referred to by subsection (1) of this section  
25 continues constitutes a separate offense. Such separate offenses may be  
26 joined in one indictment or complaint or information in several counts.

27 “(3) Violation of ORS 459A.705, 459A.710 or 459A.720 **or section 2 (5) of**  
28 **this 2012 Act** is a Class A misdemeanor.

29 “(4) In addition to the penalty prescribed by subsection (3) of this section,  
30 the Oregon Liquor Control Commission or the State Department of Agricul-

1 ture may revoke or suspend the license of any person who willfully violates  
2 ORS 459A.705, 459A.710 or 459A.720 or **section 2 (5) of this 2012 Act**, who  
3 is required by ORS chapter 471 or 635, respectively, to have a license.”

4 In line 16, delete “4” and insert “5”.

5

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<sup>LFD</sup>  
**SB 1508 Notes**

- Allows beverage distributors or importers to establish distributor cooperative for certain purposes.
- Provides that dealer that uses distributor cooperative is not required to return beverage containers to distributor or importer that does not participate in distributor cooperative. Requires distributor cooperative, and distributors and importers that do not participate in distributor cooperative, to provide Oregon Liquor Control Commission with report on beverage container return data each calendar year.
- Declares emergency, effective on passage.

Section 1, codification instructions, adding section 2 to 459A.700-.740 (bottle bill)

Section 2, new provision

- Allow for two or more distributors or importers to form a cooperative to deal with repaying stores for bottle deposits they refunded, collecting the deposits from the distributors, processing the bottles, and paying the refund values directly to consumers.
- The coop must serve the majority of dealers in Oregon (stores)
- Co-op not required to return containers to non-participating distributors, but must provide accounting to them
- Non-participating distributor must pay co-op refund value when provided with accounting
- Co-operative required to report annually the number of containers with a refund value sold and number returned, by container type
- Non-participating distributor required to report annually the number of containers with a refund value sold and number returned, by container type
- The commission may not disclose the return data to the commission? WTF?

Section 3, first reports due to OLCC by 7/1/2013

Section 4, emergency clause

**SB 1508-3**

- Cleans up language for clarity
- Replaces "aluminum" with "metal" as a container type
- Eliminates the non-sense section 2(6) provision about the commission not disclosing to the commission
- Requires OLCC to annually calculate the returned to sold percentage for each cooperative by container type, posting the results on their website
- Requires OLCC to annually calculate the returned to sold percentage for each non-participating distributor by container type, posting the results on their website
- Requires OLCC to annually calculate the returned to sold percentage for in aggregate by container type, posting the results on their website



- Other than these percentages OLCC is prohibited from disclosing information provided by a distributor or cooperative related to the return information reported by the distributors or cooperatives.

#### New Section 4

- Adds violation of the section 2(5) reporting by the distributors or cooperatives a Class A misdemeanor
- Allows OLCC or Dept of Ag to revoke or suspend the license for willful violation of section 2(5)

#### Renumbers subsequent

#### Requested FIS

**OLCC – no impact**

**Agriculture – minimal, due to rulemaking, there may be some enforcement costs**

**DOJ – no impact**

**Judicial - \$2k a biennium based on 6 cases - Minimal**

#### 1508-4

Insignificant change to explicitly state that OLCC is required to calculate and report the aggregate return ratio for **all** of the containers, as well as segregated by container material type.

#### 1508-MR

So this is the minority report amendment

- Removes the section 2(3) and (4) provisions allowing cooperatives to not return containers to non-participating distributors and requiring the non-participating distributor to pay the cooperative the refund value of redeemed containers based on accounting provided by cooperative.

#### Requested FIS from OLCC

**2012 Legislative Session**  
**AGENCY FISCAL IMPACT STATEMENT FORM**  
(See instructions for completing form)

Please complete this form, and return one copy each to the Legislative Fiscal Office (LFO) and the Budget and Management Division (BAM).

Agency Name: Oregon Liquor Control Commission  
Preparer Name/Title: Bill Schuette/Research Analyst  
Preparer Phone #: 503-872-5023  
Date Submitted: 02/10/2012

Measure #: SB 1508-3 Version: \_\_\_\_\_

- No fiscal impact**      The absence of an expenditure or revenue (non-tax) impact.
- Minimal Impact**      A fiscal impact that can be absorbed with existing agency resources.
- Fiscal Impact**      A fiscal impact determined to be greater than a minimal fiscal impact.

Does the proposed legislation impact a program that is part of the November 2011 required reduction option list? *If yes, please describe this impact in the Written Analysis section of the form.*

Yes \_\_\_\_\_ No   X  

The budgetary impact of this bill was reviewed and approved by the Interim Joint Committee on Ways and Means to be recommended to be included in the omnibus budget bill.

Yes \_\_\_\_\_ No   X  

Is the bill anticipated by the Governor's Recommended Budget as a Policy Option Package? *If yes, please identify the Policy Option Package name and number in your written analysis.*

Yes \_\_\_\_\_ No   X  

Does the proposal have a fiscal or revenue mandate effect on cities, counties, or special districts that triggers evaluation under Section 15, Article XI of the Oregon Constitution?

Yes \_\_\_\_\_ No   X  

**AGENCY WRITTEN ANALYSIS:**

The bill will allow beverage distributors to establish cooperatives for redemption of beverage containers. The bill also requires distributor cooperatives, distributors and importers to annually report beverage container return data starting July 1, 2012 to the Commission. The reporting will be for metal, glass and plastic containers for the previous calendar year. There is no audit requirement to verify the beverage container return rate so return rates for the container types will be strictly based on information provided by the reporting entities.

The Dash 3 amendment will require separate reporting of the redemption return rates for coop and non-coop members and a combined rate for the state. The reporting requirement remains July 1 but the Commission must analyze and report the redemption rates by August 1. The Dash -3 also provides the Commission with enforcement authority for the reporting.

The Commission will incur some costs to receive and analyze data but those costs will be borne by current resources. No fiscal impact is anticipated.

**2012 Legislative Session  
Agency Fiscal Impact Statement (FIS) Form**

AGENCY NAME Oregon Department of Agriculture 60300

Measure Number-Version SB1508-3

No fiscal impact	Preparer Name/Title: <u>Kevin Rashi/Budget Officer</u>
<input checked="" type="checkbox"/> Minimal Impact	Preparer Phone #: <u>503-986-4615</u>
Fiscal impact	Date Submitted: <u>2/13/12</u>

**Effect on Expenditure (by Fund and Category):**

	<u>General Fund</u>	<u>Lottery Funds</u>	<u>Other Funds</u>	<u>Federal Funds</u>	<u>NL Other Funds</u>	<u>NL Federal Funds</u>	<u>TOTAL FUNDS</u>
<b>2011-13 Biennium</b>							
Personal Services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Services and Supplies	\$ -	\$ -	\$ 10,000	\$ -	\$ -	\$ -	\$ 10,000
Special Payments	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Outlay	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Construction	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Debt Service	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 10,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 10,000</b>

	<u>General Fund</u>	<u>Lottery Funds</u>	<u>Other Funds</u>	<u>Federal Funds</u>	<u>NL Other Funds</u>	<u>NL Federal Funds</u>	<u>TOTAL FUNDS</u>
<b>2013-15 Biennium</b>							
Personal Services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Services and Supplies	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Special Payments	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Outlay	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Construction	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Debt Service	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

**Effect on Revenues (by Fund):**

	<u>General Fund</u>	<u>Lottery Funds</u>	<u>Other Funds</u>	<u>Federal Funds</u>	<u>NL Other Funds</u>	<u>NL Federal Funds</u>	<u>TOTAL FUNDS</u>
<b>2011-13 Biennium</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>2013-15 Biennium</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

**Effect on Position(s) / FTE(s):**

<u>Months of Impact</u>	<u>2011-13</u>		<u>2013-15</u>	
	<u>2011-13</u>	<u>2013-15</u>	<u>Position Count</u>	<u>FTE</u>

Please complete detail Personal Services information using "PS Calculation" tab.

Does the proposed legislation impact a program that is part of the November 2011 required reduction option list?  Yes  No  
If yes, please describe this impact in the Written Analysis section.

The budgetary impact of this bill was reviewed and approved by the Interim Joint Committee on Ways and Means to be recommended to be included in the omnibus budget bill.  Yes  No

Is the bill anticipated by the Governor's Recommended Budget as a Policy Option Package? If yes, please identify the Policy Option Package name and number in your written analysis.  Yes  No

Does the proposal have a fiscal or revenue mandate effect on cities, counties, or special districts that triggers evaluation under section 15, Article XI of the Oregon Constitution?  Yes  No

**Written Analysis:**

Section 2 is added to ORS459A.700 to 459A.740 (Bottle Bill). Measure allows two or more distributors or Importers to establish distributor cooperatives. Purposes for distributor cooperatives are to collect beverage container refunds as specified in ORS459A.705 (Refund value), refund to dealer the amount they paid for the refund value, to process beverage containers sold in Oregon. Requires that a distributor cooperative (cooperative) serve the majority of dealers in Oregon. Furthermore, a dealer that uses a cooperative to redeem and process beverage containers is not required to return beverage containers to a nonparticipating distributor or importer if the cooperative provides an accounting to the distributor or importer the beverage containers by brand and kind.

Subsection 5 describes details and deadlines for accounting of beverage containers; requires cooperative, by July 1 of each calendar year, to provide the Oregon Liquor Control Commission (OLCC) with a report of prior year's beverage container return data, calculated separately for glass, metal and plastic containers. In addition, requires that nonparticipating distributors or importers, by July 1 of each calendar year, provide the OLCC with a report of beverage container return data for the prior year, calculated separately for glass, metal and plastic containers.

Subsection 6 of Section 2 requires the OLCC, by August 1 of each year, to calculate the prior year's percentage of beverage containers returned for the refund value specified in ORS459A.705, for each cooperative. In addition, the OLCC shall calculate the prior year's percentages separately for glass, metal and plastic. The OLCC must post the percentages on its website. The OLCC must also perform the same calculations for each nonparticipating distributor or importer and post them on their website. The OLCC may not disclose any information by a (specific) distributor, importer, or a distributor cooperative.

Section 3 requires that the first reports to the OLCC, as described in Section 2(5), be filed no later than July 1, 2013 for calendar year 2012.

Section 4 amends ORS459.992 (Solid Waste Management: Criminal penalties; license suspension and revocation), makes violation of laws, rules or ordinances in certain statutes in ORS chapters 459 (Solid Waste Management) and 459A (Reuse and Recycling), a Class A misdemeanor. In addition, stipulates that each day a violation continues is a separate offense; such separate offenses may be joined in one indictment or complaint or information in several counts. Furthermore, subsection 3, makes a violation of ORS459A.705, 459A.710 or 459A.720 or Section 2(5) of this act a Class A misdemeanor. In addition to the penalties in subsection 3, the OLCC or the Dept of Agriculture may revoke or suspend the license of any person required to have a license under ORS chapters 471 or 635 respectively, who willfully violates ORS459A.705, 459A.710 or 459A.720 or Section 2(5) of this act.

Includes an emergency clause, effective on passage.

2012 Legislative Session  
Agency Fiscal Impact Statement (FIS) Form

AGENCY NAME Oregon Department of Agriculture 60300

Measure Number-Version SB1508-3

No fiscal impact	Preparer Name/Title: <u>Kevin Rash/Budget Officer</u>
<input checked="" type="checkbox"/> Minimal impact	Preparer Phone #: <u>503.986.4816</u>
Fiscal impact	Date Submitted: <u>2/13/12</u>

**Assumptions**

The fiscal impact is assumed to be minimal for the Dept of Agriculture considering its limited role in this measure. The measure doesn't make it clear how the ODA would be notified that a licensee is in violation and subject to penalty, assumes notification from OLCC would indicate when a violation has occurred as described.

Assumes one-time costs of \$10,000 for rule making in 2011/13. Since there is no historical experience, the estimated number of violators or violations are unknown. Assumes that there would be no costs associated with enforcement until 2013/15. Costs could include staff hours, facility costs, AG fees and associated S&S for conducting enforcement action. Since this program is administered by the Food Safety Program, assumes costs would be supported with Other Funds.

Costs associated with enforcement are indeterminate.

**Written Analysis: (continued)**

Example 5:

# Agency Fiscal Impact Statements

## Fiscal

## House Bill 2042

Sponsored by Representative BARNHART (at the request of Oregon Vehicle Dealers Association and Oregon Power Sports Association) (Pre-session 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.

Permits person to provide Department of Transportation with odometer disclosure form for vehicle 10 years old or older.

Requires department to keep odometer records in electronic form.

### A BILL FOR AN ACT

1  
2 Relating to vehicles; amending ORS 802.200 and 803.102.

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

4 **SECTION 1.** ORS 803.102 is amended to read:

5 803.102. (1) As used in this section:

6 (a) "Transferee" means any person to whom ownership of a motor vehicle is transferred by  
7 purchase, gift or any other means other than by creation of a security interest and any person who,  
8 as an agent, signs an odometer disclosure statement for the transferee.

9 (b) "Transferor" means any person who transfers ownership of a motor vehicle by sale, gift or  
10 any means other than by creation of a security interest and any person who, as an agent, signs an  
11 odometer disclosure statement for the transferor.

12 (2) Except as otherwise provided in this section, upon transfer of any interest in a motor vehicle,  
13 an odometer disclosure statement shall be made by the transferor to the transferee. The disclosure  
14 shall be in a form that complies with the provisions of ORS 803.120 and shall contain the information  
15 required under ORS 803.122.

16 (3) If a transfer requiring a disclosure statement involves a leased vehicle, the lessor shall notify  
17 the lessee that the lessee is required to provide odometer disclosure. The lessee shall furnish the  
18 lessor with a form that complies with the requirements of ORS 803.120 and shall provide the infor-  
19 mation required by ORS 803.122 except that for purposes of the required information, the lessee  
20 shall be considered the transferor, the lessor shall be considered the transferee and the date shall  
21 be the date of the disclosure statement.

22 (4) Where an interest in a vehicle is transferred by operation of law, the Department of Trans-  
23 portation shall determine by rule whether an odometer disclosure statement is required and if so,  
24 who is required to provide it.

25 (5) The odometer disclosure requirements of this section do not apply upon transfer of an in-  
26 terest where the transfer is due solely to the creation, release or assignment of a security interest,  
27 or upon transfer of an interest in any of the following:

28 (a) A vehicle with a gross vehicle weight rating of more than 16,000 pounds.

29 (b) A vehicle that is not self-propelled.

30 (c) A vehicle that is at least 10 years old.

**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 (d) A vehicle that is sold directly by the manufacturer to any agency of the United States in  
2 conformity with contractual specifications.

3 (e) A vehicle that is exempted from the requirement by rules of the department.

4 **(6) A person may provide an odometer disclosure statement for a vehicle that is 10 years**  
5 **old or older.**

6 **SECTION 2.** ORS 802.200 is amended to read:

7 802.200. In addition to any other records the Department of Transportation may establish, the  
8 department is subject to the following provisions concerning records:

9 (1) The department shall maintain records concerning the titling of vehicles in this state. The  
10 records under this subsection shall include the following:

11 (a) For vehicles issued a title by this state, the records shall identify the vehicle and contain  
12 the following:

13 (A) The name of the vehicle owner and any security interest holders in order of priority, except  
14 that a security interest holder need not be identified if the debtor who granted the interest is in the  
15 business of selling vehicles and the vehicles constitute inventory held for sale;

16 (B) The name of any lessor of the vehicle;

17 (C) The vehicle description; and

18 (D) Whether a certificate of title was issued for the vehicle.

19 (b) If the vehicle is an antique vehicle that is reconstructed, the records shall indicate that the  
20 vehicle is reconstructed.

21 (c) If the vehicle is a replica, the records shall indicate that the vehicle is a replica.

22 (d) Any other information concerning the titling of vehicles that the department considers con-  
23 venient or appropriate.

24 (e) All odometer readings for a vehicle that are reported to the department under provisions of  
25 the vehicle code. **The department shall keep records required under this paragraph in elec-**  
26 **tronic form.**

27 (f) If the vehicle has been reported to the department as a totaled vehicle under the provisions  
28 of ORS 819.012 or 819.014, the records shall indicate that the vehicle is a totaled vehicle unless the  
29 reason for the report was theft and the vehicle has been recovered.

30 (2) If a vehicle that has been registered or titled in another jurisdiction is registered or titled  
31 in this state, the department shall retain a record of any odometer readings shown on the title or  
32 registration documents submitted to the department at the time of registration or title.

33 (3) Except as otherwise provided in ORS 826.003, the department shall maintain records con-  
34 cerning the registration of vehicles required to be registered by the department. The records con-  
35 cerning the registration of vehicles may be stored along with records concerning the titling of  
36 vehicles. The records under this subsection shall include the following:

37 (a) For vehicles registered by the department, the records shall identify the vehicle and contain  
38 the following:

39 (A) The registration plate number assigned by the department to the vehicle;

40 (B) The name of the vehicle owner;

41 (C) The vehicle description and vehicle identification number; and

42 (D) An indication that the vehicle is a totaled vehicle if it has been reported to the department  
43 as a totaled vehicle under the provisions of ORS 819.012 or 819.014, unless the reason for the report  
44 was theft and the vehicle has been recovered.

45 (b) Any other information concerning the registration of vehicles that the department considers

1 convenient or appropriate.

2 (4) The department shall maintain separate records for the regulation of vehicle dealers. The  
 3 records required under this subsection shall include the following information about persons issued  
 4 dealer certificates:

5 (a) The person's application for a vehicle dealer certificate.

6 (b) An alphabetical index of the name of each person applying for a vehicle dealer certificate.

7 (c) A numerical index according to the distinctive number assigned to each vehicle dealer.

8 (5) The department shall maintain a file on vehicles for which the title record is canceled under  
 9 ORS 819.030. The records required under this subsection shall disclose the last registered owner of  
 10 each vehicle, any security interest holder or holders and lessors of each vehicle as shown by the  
 11 canceled title record for each vehicle and the make and year model for each vehicle.

12 (6) The department shall maintain a record of each agreement or declaration under ORS 802.500  
 13 and 802.520.

14 (7) The department shall maintain separate and comprehensive records of all transactions af-  
 15 fecting the Revolving Account for Emergency Cash Advances described under ORS 802.100.

16 (8) The department shall maintain suitable records of driver licenses, driver permits and iden-  
 17 tification cards. The records required under this subsection shall include all of the following:

18 (a) An index by name and number.

19 (b) Supporting documentation of all driver licenses, driver permits or identification cards issued.

20 (c) Every application for a driver license, driver permit or identification card.

21 (d) All driver licenses or driver permits that have been suspended or revoked.

22 (e) For each driver license, driver permit or identification card, the Social Security number of  
 23 the person to whom the driver license, driver permit or identification card is issued or proof that  
 24 the person is not eligible for a Social Security number.

25 (f) For each commercial driver license, the Social Security number of the person to whom the  
 26 license is issued, or any other number or identifying information that the Secretary of the United  
 27 States Department of Transportation determines appropriate to identify the person.

28 (9) The Department of Transportation shall maintain a two-part driving record consisting of an  
 29 employment driving record and a nonemployment driving record for each person as required under  
 30 this subsection. All of the following apply to the records required under this subsection:

31 (a) The department shall maintain driving records on:

32 (A) Every person who is granted driving privileges under a driver license, driver permit or a  
 33 statutory grant of driving privileges under ORS 807.020;

34 (B) Every person whose driving privileges have been suspended, revoked or canceled under this  
 35 vehicle code;

36 (C) Every person who has filed an accident report under ORS 811.725 or 811.730; and

37 (D) Every person who is required to provide future responsibility filings under ORS 806.200,  
 38 806.220, 806.230 or 806.240.

39 (b) In addition to other information required by this paragraph, the employment driving record  
 40 shall include all reports of drug test results that are made to the department under ORS 825.410.  
 41 Notwithstanding any other provision of law, release of the portion of the employment driving record  
 42 that shows drug test results reported under ORS 825.410 is permitted only in accordance with ORS  
 43 802.202. The employment driving record shall also include all motor vehicle accidents that the per-  
 44 son is required to report under ORS 811.720, all suspensions of driving privileges required to be  
 45 placed on the record under ORS 809.280, all suspensions of the person's commercial driver license



1 that result from operation or use of a commercial motor vehicle and all convictions of the person  
 2 for violation of motor vehicle laws except convictions for offenses requiring mandatory revocation  
 3 or suspension of driving privileges under ORS 809.409, 809.411, 809.413 and 813.400, but shall include  
 4 only such accidents, suspensions and convictions that occur while the person is driving a motor  
 5 vehicle:

6 (A) In the course of the person's employment when the person is employed by another for the  
 7 principal purpose of driving a motor vehicle;

8 (B) Carrying persons or property for compensation;

9 (C) In the course of the person's employment in the collection, transportation or delivery of mail  
 10 if the vehicle is government owned or marked for the collection, transportation or delivery of mail  
 11 in accordance with government rules;

12 (D) That is an authorized emergency vehicle;

13 (E) That is a commercial motor vehicle; or

14 (F) In the course of the person's employment with a federal, state or local government in a  
 15 public works project involving repair or maintenance of water, sewer or road systems.

16 (c) The nonemployment driving record shall include the person's:

17 (A) Motor vehicle accidents that the person is required to report under ORS 811.720, other than  
 18 the motor vehicle accidents that are included on the person's employment driving record;

19 (B) Suspensions, cancellations and revocations of licenses, permits and driving privileges;

20 (C) Convictions for violation of the motor vehicle laws other than those included in the em-  
 21 ployment driving record including, for each violation of ORS 811.100 or 811.111, the speed at which  
 22 the person was convicted of traveling and the posted speed, the speed limit or the speed that con-  
 23 stitutes prima facie evidence of violation of the basic speed rule, as appropriate; and

24 (D) Diversion agreements entered into under ORS 813.220 within the preceding 15 years.

25 (d) The department may record other entries to indicate correspondence, interviews, partic-  
 26 ipation in driver improvement programs or other matters concerning the status of the driving priv-  
 27 ileges of the person.

28 (e) When a person from another jurisdiction applies for a driver license or driver permit issued  
 29 by this state, the department shall request a copy of the person's driving record from the other ju-  
 30 risdiction. At the time the person is issued a license in Oregon, the record from the other jurisdic-  
 31 tion shall become part of the driver's record in this state with the same force and effect as though  
 32 entered on the driver's record in this state in the original instance. The department by rule may  
 33 specify methods for converting entries from out-of-state records for use in Oregon.

34 (f) When a suspension of a driver permit, driver license or other driving privilege is placed on  
 35 the driving record under ORS 809.280 for failure to appear in court on a traffic crime, the depart-  
 36 ment shall note on the record that the suspension was for failure to appear in court and shall also  
 37 note the offense charged against the person on which the person failed to appear.

38 (g) The Department of Transportation, in consultation with the Department of State Police, shall  
 39 devise and implement a method of noting suspensions and revocations of driving privileges on the  
 40 record in such a way that police agencies can determine directly from the record what class of of-  
 41 fense, as provided by law, is committed by a person who drives in violation of the suspension or  
 42 revocation. If the Department of Transportation and the Department of State Police devise a mutu-  
 43 ally agreeable alternative method of informing police agencies of the nature of a suspension or re-  
 44 vocation and the consequences of its violation, the implementation of that method shall satisfy the  
 45 duty of the Department of Transportation under this paragraph.

1 (10) The Department of Transportation shall maintain records of judgments or convictions sent  
2 to the department under ORS 810.375.

3 (11) The department shall maintain accident reports filed with the department under ORS  
4 810.460 and 811.725 to 811.735.

5 (12) The department shall maintain records of bank checks or money orders returned under ORS  
6 802.110.

7 (13) The department shall maintain records of trip permits issued by the department under ORS  
8 803.600, as provided under this subsection. The records required by this subsection shall include the  
9 following:

10 (a) A description of the vehicle sufficient to identify the vehicle.

11 (b) The person to whom the permit was issued.

12 (c) When the permit was issued.

13 (d) The type of permit issued.

14 (e) For registration weight trip permits, the maximum allowable registration weight permitted  
15 for operation under the permit.

16 (f) Any other information the department determines appropriate or convenient.  
17

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2042**

1 On page 1 of the printed bill, line 2, delete “and 803.102” and insert “,  
2 803.102 and 803.120”.

3 On page 2, line 4, delete “disclosure statement” and insert “reading, in  
4 the manner provided by the department by rule,”.

5 In line 24, after “odometer” insert “disclosures and”.

6 On page 5, after line 16, insert:

7 **“SECTION 3.** ORS 803.120 is amended to read:

8 “803.120. (1) When an odometer disclosure is required by statute or by the  
9 Department of Transportation **or an odometer reading is provided vol-**  
10 **untarily**, the disclosure **or reading** shall be in a form required by the de-  
11 partment by rule. The department may require different forms [*of*  
12 *disclosure*] for different situations and may require different information to  
13 be disclosed for different purposes.

14 “(2) Any form authorized by the department for use as an odometer dis-  
15 closure upon transfer of an interest in a vehicle **subject to the federal law**  
16 **requiring disclosure of odometer information** shall refer to the federal  
17 law [*requiring disclosure of odometer information*] and shall state that failure  
18 to complete the disclosure form, or providing false information on the form,  
19 may result in a fine or imprisonment.

20 “(3) Any form authorized by the department for use as an odometer dis-  
21 closure upon transfer of an interest in a vehicle shall provide a way for the  
22 transferor to indicate, to the best of the transferor’s knowledge, which of the

1 following is true:

2 “(a) That the odometer reading reflects the actual mileage of the vehicle;

3 “(b) That the odometer reading reflects an amount of mileage in excess  
4 of the designed mechanical odometer limit; or

5 “(c) That the odometer reading does not reflect actual mileage and should  
6 not be relied on.

7 “(4) An odometer disclosure required upon transfer of an interest in a  
8 vehicle shall be made on the vehicle title unless the department provides  
9 otherwise by rule.”.

10

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**2011 Legislative Session**  
**AGENCY FISCAL IMPACT STATEMENT FORM**  
(See instructions for completing form)

Please complete this form. Send the draft fiscal to ODOT's fiscal coordinator, Victor Dodier.

Agency Name: Oregon Department of Transportation  
Preparer Name/Title: Victor Dodier, Fiscal Coordinator  
Preparer Phone #: 503.986.3422  
Date Submitted: April 14, 2011

Measure #: HB 2042 Version: w/ -1 Proposed Amendments

<input type="checkbox"/> <b>No fiscal impact</b>	The absence of an expenditure or revenue (non-tax) impact.
<input type="checkbox"/> <b>Minimal Impact</b>	A fiscal impact that can be absorbed with existing agency resources.
<input checked="" type="checkbox"/> <b>Fiscal Impact</b>	A fiscal impact determined to be greater than a minimal fiscal impact.

Is the bill anticipated by the Governor's Recommended Budget as a Policy Option Package? If yes, please identify the Policy Option Package name and number in your written analysis.

Yes \_\_\_\_\_ No

Does the proposal have a fiscal or revenue mandate effect on cities, counties, or special districts that triggers evaluation under Section 15, Article XI of the Oregon Constitution?

Yes \_\_\_\_\_ No

**AGENCY WRITTEN ANALYSIS:**

**Comments:** (Include assumptions for cost or revenue per unit and number of units, if applicable.)

A. Effective Date: January 1, 2012

B. Brief Summary: Permits person to provide Department of Transportation with odometer disclosure statement for vehicle 10 years old or older. Requires department to keep odometer readings in electronic form.

**The -1 proposed amendments clarify differences in language between a federal odometer disclosure form and a form, required by the department by rule, for a voluntary odometer reading for vehicles ten years old and older. There is no change to fiscal impact from the bill as introduced.**

The DOJ has determined that this is not a constitutional use of Highway Funds.

C. Analysis Assumptions

1. Business Needs: DMV will enter odometer disclosure statements for vehicles 10 years old and older when issuing a title, when an odometer reading is provided. DMV will modify existing vehicle systems to allow the entry of the odometer statement for vehicles 10 years old and older, as the system currently displays an error message and will not allow the transaction to continue if a data entry operator attempts to enter an odometer statement for vehicles not subject to federal odometer law. DMV will not reject any transaction for not including an odometer statement if not otherwise required. Administrative rules currently describe requirements for odometer disclosure statements mandated under current state and federal law. Rules must be amended to include provision for voluntary readings. Forms will need to be modified since odometer readings could no longer be provided under the requirements of the certifying statement since they are exempt from mandatory reporting.

## 2. Workload:

- **Transactions:** Title transaction counts are based on the DMV Revenue & Transaction Forecast, December 2010.

### **Odometer Statements for Vehicles 10 years Old and Older:**

- Based on a recent DMV study of odometer statements provided for vehicles 10 years old and older, it is assumed that:
  - Title transactions submitted at field offices account for 65% of all title transactions.
    - Of the 65%, 52% of the title transactions submitted to field offices were for vehicles 10 years old and older.
      - Of the 52%, 47% submitted odometer statements.
  - Title transactions submitted through the mail account for 30% of all title transactions.
    - Of the 30%, 30% of the title transactions submitted through the mail were for vehicles 10 years old and older.
      - Of the 30%, 13% submitted odometer statements.
  - Electronic Vehicle Registration (EVR) transactions account for 5% of all title transactions. Because dealers and not DMV Headquarter staff enter EVR transactions, these transactions will have no impact on DMV.

<u>Transactions</u>	<u>2011-13</u> (18 months)	<u>2013-15</u> (24 months)
Projected Title Transactions	1,466,976	2,086,783
Field Office Title Transactions (65% of Total)	953,534	1,356,409
Vehicles 10 Years Old and Older (52% of F/O Titles)	495,838	705,333
Provide Odometer Statement (47% of 10+)	233,044	331,506
Mail-In Title Transactions (30% of Total)	440,093	626,035
Vehicles 10 Years Old and Older (30% of Mail-In)	132,028	187,810
Provide Odometer Statement (13% of 10+)	17,164	24,415
<b>Total Provide Odometer Statement (F/O + Mail-In)</b>	<b>250,208</b>	<b>355,921</b>

- **Data Processing:** This will require 500 hours of programming to make the necessary changes to the system. Programming details are as follows:

#### Estimate for Odometers: **500 Hours**

- *New Odometer Database*
- *New Screen for Access method to view the Odometer database readings for a specific vehicle*
- *Changes to VV04*
- *EVR/CVR*

## D. Volumes/Position Duties

There will be a minimal workload increase to Processing Services to enter and audit the odometer statement for vehicles 10 years old and older. This increase will have no position impact.

E. Additional Comments

- The proposed language in Section 1(6) makes voluntary odometer disclosures difficult for the department to administer. ORS 803.120(2) indicates that any form authorized by the department for odometer disclosure shall refer to the federal law requiring disclosure of the information, but vehicles 10 years old and older are exempt from the federal odometer law. Using the term “odometer disclosure statement” for voluntary reporting is misleading since this term has always been associated with the federal odometer law, and the vehicles described in this subsection of the bill are exempt from that law. To eliminate this concern, proposed language could be amended to say, “A person may provide an odometer reading, in a form approved by the department, for a vehicle that is 10 years old or older.
- Currently, when an “odometer disclosure statement” is provided, certain information is required to be certified as true under state and federal laws, but this certified statement is not required if the vehicle is 10 years old or older because these vehicles are exempt. Because odometer readings would be voluntary after 10 years, they might not be provided each time the vehicle is retitled. This could be misleading for Oregon citizens and other jurisdictions who believe the odometer information printed on the title is accurate when it may no longer be reliable.
- The Assistant Attorney General has determined that recording and maintaining odometer readings provided by customers on a voluntary basis is not a constitutional use of the Highway Fund. Costs related to voluntary reporting and maintenance will need to be provided from a different source.

**Fiscal Impact Worksheet – General Funds**

**A. Personal Services**

<b>1. Start up Costs</b>	<b><u>2011-13</u></b>	<b><u>2013-15</u></b>
Implementation Costs: Implementation Team	\$22,500	\$0
Start up Total	\$22,500	\$0
 <b>2. On-going Costs: None</b>		
 <b>3. TOTAL PERSONAL SERVICES</b>	 <b>\$22,500</b>	 <b>\$0</b>

**B. Services and Supplies**

<b>1. Start up Costs</b>		
Programming (500 hours x \$55/hour)	\$27,500	\$0
AAG Review of Administrative Rules (30 hours @ \$137/hr)	\$4,110	\$0
Training Costs	\$5,000	\$0
Start up Total	\$36,610	\$0
 <b>2. On-going Costs: None</b>		
 <b>3. TOTAL SERVICES AND SUPPLIES</b>	 <b>\$36,610</b>	 <b>\$0</b>

**C. Capital Outlay: None**

**D. TOTAL EXPENDITURES**

**\$59,110**

**\$0**

**Revenue Worksheet:** None

**AGENCY QUANTITATIVE ANALYSIS**

**Effect on Expenditure (by Fund and Category):**

	<u>General Fund</u>	<u>Lottery Funds</u>	<u>Other Funds</u>	<u>Federal Funds</u>	<u>TOTAL FUNDS</u>
<b>2011-13 Biennium</b>					
Personal Services	\$ 22,500	\$ -	\$ -	\$ -	\$ 22,500
Services and Supplies	\$ 36,610	\$ -	\$ -	\$ -	\$ 36,610
Special Payments	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Outlay	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Construction	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total</b>	<b>\$ 59,110</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 59,110</b>

	<u>General Fund</u>	<u>Lottery Funds</u>	<u>Other Funds</u>	<u>Federal Funds</u>	<u>TOTAL FUNDS</u>
<b>2013-15 Biennium</b>					
Personal Services	\$ -	\$ -	\$ -	\$ -	\$ -
Services and Supplies	\$ -	\$ -	\$ -	\$ -	\$ -
Special Payments	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Outlay	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Construction	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

**Effect on Revenues (by Fund):**

	<u>General Fund</u>	<u>Lottery Funds</u>	<u>Other Funds</u>	<u>Federal Funds</u>	<u>TOTAL FUNDS</u>
<b>2011-13 Biennium</b>	\$ -	\$ -	\$ -	\$ -	\$ -
<b>2013-15 Biennium</b>	\$ -	\$ -	\$ -	\$ -	\$ -

**Effect on Position(s) / FTE(s):**

Months of Impact	2011-13		2013-15	
	2011-13	2013-15	2011-13	2013-15
	Position Count	FTE	Position Count	FTE



Prepared by: Robin LaMonte  
 Reviewed by: Susie Jordan  
 Date: Monday, April 18, 2011

**Measure Description:**

Permits person to provide Department of Transportation with odometer disclosure form for vehicle 10 years old or older.

**Government Unit(s) Affected:**

Oregon Department of Transportation (ODOT)

**Government Unit(s) Affected:**

Oregon Department of Transportation (ODOT)

**Summary of Expenditure Impact\* See Comments**

	2011-13 Biennium	2013-15 Biennium
General Fund	59,110	
<b>Total Funds</b>	<b>\$59,110</b>	<b>\$0</b>
Positions		
FTE		

**Local Government Mandate:**

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

**Analysis:**

HB 2042-2 provides that a person may provide an odometer disclosure statement for a vehicle that is 10 years old or older and requires that the Department of Transportation will keep these records in an electronic format. ODOT estimates, based on experience with the implementation of similar legislation, that this bill will require \$22,500 in expenditures for staff time. An additional \$36,610 will be required for programming (\$27,500), Attorney General rule review (\$4,110) and staff training (\$5,000).

The fiscal impact identifies the fund source for this bill as General Fund, because ODOT notes that the Attorney General has determined that recording and maintaining odometer readings provided by customers on a voluntary basis is not a constitutional use of the Highway Fund.

# House Bill 2499

-12-13

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Consumer Protection and Government Accountability)

## 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.

Transfers duties, functions and powers of Department of Consumer and Business Services relating to appraisal management companies to Appraiser Certification and Licensure Board on September 1, 2011.

Modifies provisions relating to appraisal management companies.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

Relating to appraisal management companies; creating new provisions; amending ORS 674.305, 674.310 and 705.141 and sections 1, <sup>9</sup>to 9, chapter 87, Oregon Laws 2010; and declaring an emergency.

2, 3, 4, 5, 6, 7, 8 and

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

## TRANSFER

**SECTION 1.** The duties, functions and powers of the Department of Consumer and Business Services relating to appraisal management companies are imposed upon, transferred to and vested in the Appraiser Certification and Licensure Board.

## RECORDS, PROPERTY, EMPLOYEES

**SECTION 2.** (1) The Director of the Department of Consumer and Business Services shall deliver to the Appraiser Certification and Licensure Board all records and property within the jurisdiction of the director that relate to the duties, functions and powers transferred by section 1 of this 2011 Act.

(2) The Appraiser Certification and Licensure Board shall take possession of the records and property.

(3) The Governor shall resolve any dispute between the Department of Consumer and Business Services and the Appraiser Certification and Licensure Board relating to transfers of records or property under this section, and the Governor's decision is final.

## UNEXPENDED REVENUES

**SECTION 3.** (1) The unexpended balances of amounts authorized to be expended by the Department of Consumer and Business Services for the biennium ending June 30, 2013, from revenues dedicated, continuously appropriated, appropriated or otherwise made available for

2013

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 the purpose of administering and enforcing the duties, functions and powers transferred by  
 2 section 1 of this 2011 Act are transferred to and are available for expenditure by the Ap-  
 3 praiser Certification and Licensure Board for the biennium beginning <sup>ending June 30, 2013</sup> July 1, 2011, for the  
 4 purpose of administering and enforcing the duties, functions and powers transferred by sec-  
 5 tion 1 of this 2011 Act.

6 (2) The expenditure classifications, if any, established by Acts authorizing or limiting  
 7 expenditures by the department remain applicable to expenditures by the board under this  
 8 section.

9  
 10 **ACTION, PROCEEDING, PROSECUTION**

11  
 12 **SECTION 4.** The transfer of duties, functions and powers to the Appraiser Certification  
 13 and Licensure Board by section 1 of this 2011 Act does not affect any action, proceeding or  
 14 prosecution involving or with respect to such duties, functions and powers begun before and  
 15 pending at the time of the transfer, except that the board is substituted for the Department  
 16 of Consumer and Business Services in the action, proceeding or prosecution.

17  
 18 **LIABILITY, DUTY, OBLIGATION**

19  
 20 **SECTION 5.** (1) Nothing in sections 1 to 7 of this 2011 Act relieves a person of a liability,  
 21 duty or obligation accruing under or with respect to the duties, functions and powers  
 22 transferred by section 1 of this 2011 Act. The Appraiser Certification and Licensure Board  
 23 may undertake the collection or enforcement of any such liability, duty or obligation.

24 (2) The rights and obligations of the Department of Consumer and Business Services le-  
 25 gally incurred under contracts, leases and business transactions executed, entered into or  
 26 begun before the operative date of section 1 of this 2011 Act accruing under or with respect  
 27 to the duties, functions and powers transferred by section 1 of this 2011 Act are transferred  
 28 to the board. For the purpose of succession to these rights and obligations, the board is a  
 29 continuation of the department and not a new authority.

30  
 31 **RULES**

32  
 33 **SECTION 6.** Notwithstanding the transfer of duties, functions and powers by section 1  
 34 of this 2011 Act, the rules of the Department of Consumer and Business Services with re-  
 35 spect to such duties, functions or powers that are in effect on the operative date of section  
 36 1 of this 2011 Act continue in effect until superseded or repealed by rules of the Appraiser  
 37 Certification and Licensure Board. References in such rules of the department to the de-  
 38 partment or an officer or employee of the department are considered to be references to the  
 39 board or an officer or employee of the board.

40 **SECTION 7.** Whenever, in any uncodified law or resolution of the Legislative Assembly  
 41 or in any rule, document, record or proceeding authorized by the Legislative Assembly, in  
 42 the context of the duties, functions and powers transferred by section 1 of this 2011 Act,  
 43 reference is made to the Department of Consumer and Business Services, or an officer or  
 44 employee of the department, whose duties, functions or powers are transferred by section 1  
 45 of this 2011 Act, the reference is considered to be a reference to the Appraiser Certification

1 and Licensure Board or an officer or employee of the board who by this 2011 Act is charged  
 2 with carrying out such duties, functions and powers.

3  
 4 **APPRAISAL MANAGEMENT COMPANIES**

5  
 6 **SECTION 8.** Section 1, chapter 87, Oregon Laws 2010, is amended to read:

7 **Sec. 1.** As used in sections 1 to 8 [of this 2010 Act], chapter 87, Oregon Laws 2010:

8 **(1) "Appraisal" means the process of developing an opinion of the value of real property**  
 9 **in conformance with commonly accepted standards for appraisers.**

10 *[(1)(a) "Appraisal management company" means a business entity that:]*

11 *[(A) Performs appraisal management services;]*

12 *[(B) Administers networks of independent contractor appraisers to perform real estate appraisal*  
 13 *activity for clients; or]*

14 *[(C) Otherwise serves as a third-party broker of real estate appraisal activity between clients and*  
 15 *appraisers.]*

16 *[(b) "Appraisal management company" does not include:]*

17 *[(A) An appraiser who in the normal course of business enters into an agreement with another*  
 18 *appraiser for the performance of real estate appraisal activity that the hiring appraiser cannot*  
 19 *complete;]*

20 *[(B) An appraiser who in the normal course of business enters into an agreement with another*  
 21 *appraiser for the performance of real estate appraisal activity and upon the completion of the activity,*  
 22 *jointly signs the appraisal report with the appraiser performing the activity; or]*

23 *[(C) A person who contracts for fewer than 10 appraisals in this state in a calendar year.]*

24 **(2)(a) "Appraisal management company" means, in connection with valuing properties**  
 25 **collateralizing mortgage loans or mortgages incorporated into a securitization, an external**  
 26 **third party that:**

27 **(A) Oversees an appraisal panel of more than 15 appraisers in Oregon or at least 25 ap-**  
 28 **praisers in the United States; and**

29 **(B) Is authorized by a client to:**

30 **(i) Recruit, select and retain appraisers;**

31 **(ii) Contract with appraisers to perform appraisal assignments;**

32 **(iii) Manage the process of having an appraisal performed, including providing adminis-**  
 33 **trative duties such as receiving appraisal orders and appraisal reports, submitting completed**  
 34 **appraisal reports to creditors and underwriters, collecting fees from creditors and under-**  
 35 **writers for services provided and reimbursing appraisers for services performed; or**

36 **(iv) Review and verify the work of appraisers.**

37 **(b) "Appraisal management company" does not include an entity that employs real estate**  
 38 **appraisers exclusively as employees for the performance of real estate appraisal activity.**

39 *[(2)] (3) "Appraisal management services" means the process of receiving a request for the per-*  
 40 *formance of real estate appraisal activity from a client and, for a fee paid by the client, entering into*  
 41 *an agreement with an independent contractor appraiser to perform the real estate appraisal activity*  
 42 *contained in the request.*

43 **(4)(a) "Appraisal review" means the act or process of developing and communicating an**  
 44 **opinion about the quality of the substantive aspects of another appraiser's work that was**  
 45 **performed as part of an appraisal assignment.**

1 (b) An "appraisal review" is not a quality control examination.

2 [(3)] (5) "Appraiser" means a state certified appraiser or state licensed appraiser certified or  
3 licensed under ORS 674.310.

4 [(4)] (6) "Appraiser panel" means a group of [independent contractor] appraisers who have been  
5 selected by an appraisal management company to perform real estate appraisal activity for [the ap-  
6 praisal management company] clients.

7 (7) "Client" means a creditor of a consumer credit transaction secured by the consumer's  
8 real estate or an underwriter of or other principal in the secondary mortgage markets that  
9 engages an appraisal management company to perform appraisal management services.

10 [(5)] (8) "Controlling person" means:

11 (a) An owner, officer or director of an appraisal management company;

12 [(b) An individual employed, appointed or authorized by an appraisal management company to  
13 enter into an agreement with a client for the performance of appraisal management services or to enter  
14 into an agreement with an independent contractor appraiser for the performance of real estate appraisal  
15 activity; or]

16 (b) An individual authorized by an appraisal management company to enter into a con-  
17 tractual relationship with:

18 (A) A client for the performance of services requiring registration as an appraisal man-  
19 agement company; and

20 (B) An appraiser for the performance of appraisals; or

21 (c) An individual who possesses, directly or indirectly, the power to direct the management or  
22 policies of an appraisal management company.

23 [(6) "Financial institution" has the meaning given that term in ORS 674.010.]

24 (9) "Independent contractor appraiser" means an appraiser who receives a fee for per-  
25 forming an appraisal, but who is not an employee of the person engaging the appraiser.

26 (10)(a) "Quality control examination" means an examination of an appraisal report for  
27 compliance and completeness, including examination for grammatical or typographical er-  
28 rors.

*in relation to client specifications*

29 (b) A "quality control examination" is not an appraisal review.

30 [(7)] (11) "Real estate appraisal activity" means the activity described in ORS 674.100.

31 (12) "Uniform Standards of Professional Appraisal Practice" means the current standards  
32 of the appraisal profession, developed for appraisers and users of appraisal services by the  
33 Appraisal Standards Board of the Appraisal Foundation.

34 **SECTION 9.** Section 2, chapter 87, Oregon Laws 2010, is amended to read:

35 **Sec. 2.** (1)[(a)] A person may not [provide appraisal management services] directly or indirectly  
36 engage in or attempt to engage in business as an appraisal management company or adver-  
37 tise or represent that the entity is an appraisal management company unless the person is  
38 registered as an appraisal management company with the [Department of Consumer and Business  
39 Services] Appraiser Certification and Licensure Board.

40 [(b) Notwithstanding ORS 674.100 (3)(a), an affiliate of a financial institution or insurance com-  
41 pany may not provide appraisal management services unless the affiliate is registered as an appraisal  
42 management company with the department.]

43 (2) A business entity may apply for registration as an appraisal management company on forms  
44 prescribed by rule by the [department] board. The application must include:

45 (a) The name, address and phone contact information of the entity;

*Insert A*

- 1 (b) The name, address and **phone** contact information of a controlling person of the entity;  
 2 (c) If the entity is not domiciled in this state, the name and **phone** contact information for the  
 3 entity's agent for service of process in this state;  
 4 (d) The name, address and **phone** contact information of any person that owns 10 percent or  
 5 more of the entity;  
 6 (e) A certification that:  
 7 (A) The entity has a system to verify that each appraiser on the entity's appraiser panel is li-  
 8 censed or certified under ORS 674.310 and is competent to perform real estate appraisal activity;  
 9 *[(B) If the entity reviews real estate appraisal activity performed by an appraiser, the review is*  
 10 *conducted by another appraiser; and]*  
 11 **(B) The entity requires appraisers completing appraisals at the entity's request to comply**  
 12 **with the Uniform Standards of Professional Appraisal Practice;**  
 13 **(C) The entity has a system in place to require that appraisals are conducted independ-**  
 14 **ently and without inappropriate influence or coercion as required by the appraisal independ-**  
 15 **ence standards established under section 129E of the Truth in Lending Act; and**  
 16 *[(C)]* **(D) The entity maintains and retains for at least five years, or as required under ORS**  
 17 **674.150, a detailed record of each appraisal management services request the entity receives and the**  
 18 **appraiser who performs the real estate appraisal activity contained in the request;**  
 19 **(f) The surety bond, letter of credit or deposit required by section 3 [of this 2010 Act], chapter**  
 20 **87, Oregon Laws 2010;**  
 21 **(g) Fees in an amount prescribed by rule by the [department] board, which must be sufficient to**  
 22 **cover the costs of administering sections 1 to 8 and 9 [of this 2010 Act], chapter 87, Oregon Laws**  
 23 **2010; and**  
 24 *[(h) A description of the dispute resolution process required by section 7 of this 2010 Act; and]*  
 25 *[(i)]* **(h) Any other information required by the [department] board by rule.**  
 26 **(3) The [department] board may not issue a registration to a business entity as an appraisal**  
 27 **management company unless:**  
 28 **(a) Each individual who owns 10 percent or more of the entity and the controlling person**  
 29 **identified by the entity in the application have completed a criminal records check; and**  
 30 **(b) The [department] board determines that each individual who owns 10 percent or more of the**  
 31 **entity and the controlling person identified by the entity in the application:**  
 32 *[(a)]* **(A) Are of good moral character; and**  
 33 *[(b)]* **(B) Have never had a license, certification or registration to act as an appraiser or ap-**  
 34 **praisal management company refused, denied, canceled or revoked in this state or in any other state.**  
 35 **(4)(a) The board shall issue a unique registration number to each appraisal management**  
 36 **company registered under this section.**  
 37 **(b) The board shall maintain a published list of appraisal management companies regis-**  
 38 **tered under this section.**  
 39 **(c) An appraisal management company registered under this section shall disclose the**  
 40 **company's registration number to each appraiser used by the company.**  
 41 *[(4)]* **(5) An appraisal management company registration expires two years after the date of the**  
 42 **issuance of the registration. The [department] board shall adopt rules establishing the requirements**  
 43 **for renewal or reactivation of a registration. The rules must require that an appraisal manage-**  
 44 **ment company provide all of the information and certifications required for an initial appli-**  
 45 **cation for registration under subsection (2) of this section in the renewal application. [include**

1 ~~a requirement that the appraisal management company must certify that:~~

2 ~~[(a) The company has a system to verify that each appraiser on the company's appraiser panel is~~  
 3 ~~licensed or certified under ORS 674.510 and is competent to perform real estate appraisal activity,]~~

4 ~~[(b) If the company reviews real estate appraisal activity performed by an appraiser, the review is~~  
 5 ~~conducted by another appraiser, and]~~

6 ~~[(c) The company maintains and retains for at least five years, or as required under ORS 674.150,~~  
 7 ~~a detailed record of each appraisal management services request the company receives and the ap-~~  
 8 ~~praiser who performs the real estate appraisal activity contained in the request.]~~

9 **SECTION 10.** Section 3, chapter 87, Oregon Laws 2010, is amended to read:

10 **Sec. 3.** (1) An applicant for issuance or renewal of an appraisal management company registra-  
 11 tion shall file with the [Department of Consumer and Business Services] **Appraiser Certification and**  
 12 **Licensure Board** a surety bond with one or more corporate sureties authorized to do business in  
 13 this state, or an irrevocable letter of credit issued by an insured institution, as defined in ORS  
 14 706.008, in the amount of \$25,000.

15 (2) The surety bond or letter of credit required under subsection (1) of this section must:

16 (a) Be conditioned that the applicant pays:

17 (A) All amounts owing to persons who perform real estate appraisal activity for the appraisal  
 18 management company; and

19 (B) All amounts adjudged against the appraisal management company by reason of negligent or  
 20 improper real estate appraisal activity or appraisal management services or breach of contract in  
 21 performing real estate appraisal activity or appraisal management services; and

22 (b) Require the surety company to provide written notice to the [department] board by registered  
 23 or certified mail:

24 (A) At least 30 days before the surety company cancels or revokes the bond; or

25 (B) When the surety company pays for a loss under the bond.

26 (3) In lieu of the surety bond or letter of credit required under subsection (1) of this section, the  
 27 appraisal management company may file with the [department] board, under the same terms and  
 28 conditions as when a bond is filed, a deposit in cash or negotiable securities acceptable to the [de-  
 29 partment] board.

30 (4) The surety bond, letter of credit or deposit required by this section must be continuously on  
 31 file with the [department] board in the amount of \$25,000 and is for the exclusive purpose of payment  
 32 of the obligations listed in subsection (2) of this section. Upon termination or cancellation of the  
 33 bond, withdrawal of the deposit or reduction of the bond, letter of credit or deposit to less than  
 34 \$25,000, a registered appraisal management company shall:

35 (a) File a replacement bond, letter of credit or deposit within the time period established by the  
 36 [department] board by rule; or

37 (b) Surrender the company's registration to the [department] board and cease operating as an  
 38 appraisal management company.

39 (5) Any person damaged by an appraisal management company's failure to pay an obligation  
 40 listed in subsection (2) of this section has a right of action under the bond. An action under the bond  
 41 must be commenced within one year after the appraisal management company fails to pay the  
 42 amount owing or the amount adjudged against the appraisal management company.

43 **SECTION 11.** Section 4, chapter 87, Oregon Laws 2010, is amended to read:

44 **Sec. 4.** (1) The [Department of Consumer and Business Services shall] **Appraiser Certification**  
 45 **and Licensure Board** may adopt rules establishing a procedure for auditing an appraisal manage-

1 ment company registered under section 2 [of this 2010 Act], chapter 87, Oregon Laws 2010, to ex-  
 2 amine the appraisal management company's compliance with sections 1 to 8 [of this 2010 Act],  
 3 chapter 87, Oregon Laws 2010.

4 [(2) The department shall audit each appraisal management company registered under section 2 of  
 5 this 2010 Act at least every two years.]

6 [(3) The department shall issue written findings on the results of the audit.]

7 [(4)] (2) If an appraisal management company fails an audit, the [department] board may impose  
 8 a civil penalty under section 9 [of this 2010 Act], chapter 87, Oregon Laws 2010.

9 **SECTION 12.** Section 5, chapter 87, Oregon Laws 2010, is amended to read:

10 **Sec. 5. (1)** An appraisal management company or an employee, controlling person or agent of  
 11 an appraisal management company may not:

12 (a) Attempt to influence the development[,] or reporting of an appraisal or appraisal review  
 13 [of an appraisal or appraisal review assignment] through coercion, extortion, collusion, compensation,  
 14 [instruction,] inducement, intimidation, bribery or any other manner, including but not limited to:

15 (A) Withholding or threatening to withhold timely payment for an appraisal;

16 (B) Withholding or threatening to withhold future business for an [independent contractor] ap-  
 17 praiser;

18 (C) Expressly or impliedly promising future business, promotions or increased compensation for  
 19 an appraiser;

20 (D) Conditioning the [request for real estate appraisal activity] ordering of an appraisal report  
 21 or any payment on the opinion, conclusion or valuation to be reached, or on a preliminary estimate  
 22 or opinion requested from an appraiser;

23 (E) Requesting that an appraiser provide an estimated, predetermined or desired valuation in  
 24 an appraisal report, or provide estimated values or comparable sales at any time prior to the  
 25 appraiser's completion of real estate appraisal activity;

26 (F) Providing to an appraiser an anticipated, estimated, encouraged or desired value for a sub-  
 27 ject property or a proposed or target amount to be loaned to the borrower, except that a copy of  
 28 the sales contract for a purchase transaction may be provided;

29 (G) Providing to an appraiser, or any entity or individual related to the appraiser, stock or other  
 30 financial or nonfinancial benefits; or

31 (H) [Allowing the removal of] **Except within the first 90 days after an appraiser is added to**  
 32 **the company's appraiser panel, removing an appraiser from an appraiser panel without prior**  
 33 **written notice to the appraiser, including notice of evidence of the reason for removal;**

34 [(I) Obtaining, using or paying for a second or subsequent appraisal or ordering an automated  
 35 valuation model in connection with a mortgage financing transaction unless there is a reasonable basis  
 36 to believe that the initial appraisal was flawed or tainted and such basis is clearly and appropriately  
 37 noted in the loan file, or unless such appraisal or automated valuation model is done pursuant to an  
 38 appraisal review or quality control process that is completed by an appraiser before or after a loan is  
 39 funded; or]

40 [(J) Any other act or practice that impairs or attempts to impair an appraiser's independence, ob-  
 41 jectivity or impartiality.]

42 (b) **Require an appraiser to prepare an appraisal under a time frame that the appraiser,**  
 43 **in the appraiser's professional judgment, believes does not afford the appraiser the ability to**  
 44 **meet the appraiser's legal and professional obligations;**

45 (c) **Require an appraiser to prepare an appraisal if the appraiser has notified the company**

Insert (B)



1 that, in the appraiser's professional judgment, the appraiser does not have the necessary  
2 expertise for the assignment;

3 (d) Prohibit legal communications between the appraiser and a lender, a real estate  
4 licensee or any other person who the appraiser, in the appraiser's professional judgment,  
5 believes possesses information that would be relevant;

6 (e) Knowingly require an appraiser to take any action that does not comply with the  
7 provisions of ORS chapter 674, the rules of the Appraiser Certification and Licensure Board  
8 or any assignment conditions and certifications required by the client for whom an appraisal  
9 is being performed;

10 (f) Require an appraiser to indemnify the appraisal management company against liabil-  
11 ity, damages, losses or claims except for liability, damages, losses or claims arising out of  
12 the services performed by the appraiser;

13 (g) Prohibit an appraiser from reporting the fee paid to the appraiser in the appraisal  
14 report; or

15 [(b)] (h) [Substantively] Alter in any way a completed appraisal report submitted by an appraiser.

16 (2) This section does not prohibit an appraisal management company from requesting, on behalf  
17 of a financial institution at the request of a consumer, that an appraiser:

18 (a) Provide additional information about the basis for the valuation; *or*

19 (b) Correct objective factual errors in a completed appraisal report[; or] *SPD*

20 [(c) Consider the *value* of other comparable properties]. *SPD*

21 **SECTION 13.** Section 6, chapter 87, Oregon Laws 2010, is amended to read:

22 **Sec. 6.** Except in the case of breach of contract or substandard performance of real estate ap-  
23 praisal activity, an appraisal management company shall make payment to an independent contrac-  
24 tor appraiser for the completion of an appraisal or appraisal review assignment:

25 (1) Within 60 days after the appraiser provides the completed appraisal report to the appraisal  
26 management company[.]; or

27 (2) In accordance with another payment schedule agreed to by the appraiser and the ap-  
28 praisal management company.

29 **SECTION 14.** Section 7, chapter 87, Oregon Laws 2010, is amended to read:

30 **Sec. 7.** The [Department of Consumer and Business Services] Appraiser Certification and  
31 Licensure Board shall adopt rules requiring an appraisal management company to [establish a dis-  
32 pute resolution process that allows] forward a complaint from a person with an interest in a real  
33 estate transaction for which an appraisal was arranged by the appraisal management company to  
34 [dispute the appraisal] the client that requested the appraisal.

35 **SECTION 15.** Section 8, chapter 87, Oregon Laws 2010, is amended to read:

36 **Sec. 8.** [(1) The Department of Consumer and Business Services] The Appraiser Certification  
37 and Licensure Board may suspend or revoke an appraisal management company registration for  
38 a violation of sections 1 to 8 [of this 2010 Act], chapter 87, Oregon Laws 2010, or of rules adopted  
39 by the [department] board.

40 [(2) The revocation, lapsing or suspension of an appraisal management company registration does  
41 not deprive the department of jurisdiction to proceed with any investigation of or any action or disci-  
42 plinary proceedings against the appraisal management company, or to revise or render null and void  
43 an order suspending or revoking the registration.]

44 **SECTION 16.** Sections 17 to 19 of this 2011 Act are added to and made a part of sections  
45 1 to 8, chapter 87, Oregon Laws 2010.

1 **SECTION 17.** Any employee of an appraisal management company who has reasonable  
2 basis to believe that an appraiser has failed to comply with the Uniform Standards of Pro-  
3 fessional Appraisal Practice, is violating the law or is otherwise engaging in unethical or  
4 unprofessional conduct, shall notify the Appraiser Certification and Licensure Board if the  
5 appraiser's conduct is likely to affect the value assigned to the real estate being appraised.

6 ~~**SECTION 18.** The Appraiser Certification and Licensure Board shall adopt rules estab-~~  
7 ~~lishing training requirements and qualifications for employees of appraisal management~~  
8 ~~companies who:~~

- 9 (1) Select appraisers for an appraiser panel;
- 10 (2) Select appraisers to perform real estate activity; or
- 11 (3) Perform quality control examinations.

*Insert*  
*Ⓢ*

12 **SECTION 19.** (1) The Appraiser Certification and Licensure Board shall establish by rule  
13 fees for appraisal management companies, including but not limited to fees for:

- 14 (a) Application for registration.
- 15 (b) Registration.
- 16 (c) Renewal of registration.
- 17 (d) Duplicate registration.
- 18 (e) Renewal of inactive registration.
- 19 (f) Reactivation of inactive registration.
- 20 (g) Late renewal of registration.
- 21 (h) Inactive status.

*Insert* *Ⓢ*

22 (2) All moneys collected or received by the board pursuant to this section shall be paid  
23 into the account created by the board under ORS 182.470.

24 **SECTION 20.** Section 9, chapter 87, Oregon Laws 2010, is amended to read:

25 **Sec 9.** (1) In accordance with ORS chapter 183, the [Department of Consumer and Business  
26 Services] Appraiser Certification and Licensure Board may impose a civil penalty, not to exceed  
27 \$15,000 <sup>for each violation</sup> on a person who violates a provision of sections 1 to 8 [of this 2010 Act], chapter 87,  
28 Oregon Laws 2010, or any rule adopted by the board under sections 1 to 8

*Chapter 87,*  
*Oregon*  
*Laws*  
*2010.*

29 (2) The civil penalty under this section is in addition to and not in lieu of any other penalty or  
30 sanction provided by law.

31 **SECTION 21.** ORS 705.141, as amended by section 10, chapter 87, Oregon Laws 2010, is  
32 amended to read:

33 705.141. For the purpose of requesting a state or nationwide criminal records check under ORS  
34 181.534, the Department of Consumer and Business Services may require the fingerprints of a person  
35 who is applying for a license [or registration], or renewal of a license [or registration], under ORS  
36 744.001, 744.059 or 744.326 [or section 2, chapter 87, Oregon Laws 2010,] or a person who:

- 37 (1)(a) Is employed or applying for employment by the department; or
- 38 (b) Provides services or seeks to provide services to the department as a contractor, vendor or  
39 volunteer; and
- 40 (2) Is, or will be, working or providing services in a position:
  - 41 (a) In which the person is providing information technology services and has control over, or  
42 access to, information technology systems that would allow the person to harm the information  
43 technology systems or the information contained in the systems;
  - 44 (b) In which the person has access to information that state or federal laws, rules or regulations  
45 prohibit disclosing or define as confidential;

1 (c) That has payroll functions or in which the person has responsibility for receiving, receipting  
 2 or depositing money or negotiable instruments, for billing, collections or other financial transactions  
 3 or for purchasing or selling property or has access to property held in trust or to private property  
 4 in the temporary custody of the state;

5 (d) That has mailroom duties as a primary duty or job function;

6 (e) In which the person has responsibility for auditing the department;

7 (f) That has personnel or human resources functions as a primary responsibility;

8 (g) In which the person has access to Social Security numbers, dates of birth or criminal back-  
 9 ground information of employees or members of the public; or

10 (h) In which the person has access to tax or financial information about individuals or business  
 11 entities.

12 **SECTION 22.** ORS 674.305 is amended to read:

13 674.305. (1) The Appraiser Certification and Licensure Board is established. The board shall  
 14 operate as a semi-independent state agency subject to ORS 182.456 to 182.472 for purposes of car-  
 15 rying out the provisions of this chapter. The board shall consist of ~~seven~~ eight members. The  
 16 members shall be appointed by the Governor and must be residents of this state.

17 (2) The board shall be composed of:

18 (a) Five appraisers certified or licensed under ORS 674.310;

19 (b) One individual who is employed by a financial institution or a mortgage banker; ~~and~~

20 (c) One member who represents appraisal management companies registered under sec-  
 21 tion 2, chapter 87, Oregon Laws 2010; and

22 ~~(c)~~ (d) One individual who is a public member and who:

23 (A) Is not engaged in professional real estate activity;

24 (B) Is not a state certified or state licensed appraiser;

25 (C) Is not employed by a financial institution or a mortgage banker; and

26 (D) Does not have a direct financial interest in any person who is required, or whose employees  
 27 or agents are required, to be state licensed or state certified appraisers.

28 (3) The term of office of each member is four years with two terms maximum, but a member  
 29 serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor  
 30 shall appoint a successor whose term begins on July 1 next following. A member is eligible for re-  
 31 appointment. If there is a vacancy for any cause, the Governor shall make an appointment to become  
 32 immediately effective for the unexpired term. A member may not be appointed to serve more than  
 33 two consecutive terms on the board.

34 (4) The board shall select one of its members as chairperson and another as vice chairperson,  
 35 for such terms and with duties and powers necessary for the performance of the functions of such  
 36 offices as the board determines.

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

38 (6) The board shall meet at least once every three months at a place, day and hour determined  
 39 by the board. The board also shall meet at other times and places specified by the call of the  
 40 chairperson or of a majority of the members of the board.

41 (7) In accordance with applicable provisions of ORS chapter 183, the board shall adopt rules  
 42 necessary for the administration of this chapter.

43 (8) The appointment of a member of the board is subject to confirmation by the Senate in the  
 44 manner prescribed in ORS 171.562 and 171.565.

45 **SECTION 23.** ORS 674.310 is amended to read:

- 1           674.310. (1) The Appraiser Certification and Licensure Board shall:
- 2           (a) Have the power to do all things necessary and convenient to carry into effect the provisions
- 3 of this chapter, **sections 1 to 8, chapter 87, Oregon Laws 2010**, and the federal Act and to regu-
- 4 late the activities of state licensed appraisers, state certified appraisers [*and*], state registered ap-
- 5 praiser assistants **and appraisal management companies** to ensure that real estate appraisals
- 6 conform to the law in effect on the date of the real estate appraisal activity.
- 7           (b) Certify or license appraisers and register appraiser assistants as necessary to carry out the
- 8 federal Act and the purposes set forth in ORS 674.020.
- 9           (c) **Register appraisal management companies under sections 1 to 8, chapter 87, Oregon**
- 10 **Laws 2010.**
- 11           [[*c*]] (d) Supervise the activities of state certified appraisers, state licensed appraisers [*and*],
- 12 state registered appraiser assistants **and appraisal management companies** as provided in this
- 13 chapter **and sections 1 to 8, chapter 87, Oregon Laws 2010**, to ensure that they perform real es-
- 14 tate appraisal activity in strict conformance with the provisions of this chapter and of the federal
- 15 Act, and that they otherwise comply with the provisions of this chapter **and sections 1 to 8,**
- 16 **chapter 87, Oregon Laws 2010**, in the conduct of their professional activities.
- 17           [[*d*]] (e) Establish, keep current and, no less than annually, transmit to the Appraisal Subcom-
- 18 mittee a roster listing state certified appraisers and state licensed appraisers.
- 19           [[*e*]] (f) Collect and remit [*annual registry*] fees as required [*by*] **under ORS 674.330 and section**
- 20 **19 of this 2011 Act.**
- 21           (2) Rules adopted by the Appraiser Certification and Licensure Board to govern real estate ap-
- 22 praiser certification and licensure shall conform with the requirements of the federal Act. The
- 23 board shall adopt rules including but not limited to:
- 24           (a) Establishing programs for the certification, licensure or registration of individuals who en-
- 25 gage in real estate appraisal activity.
- 26           (b) Establishing educational requirements for certification or licensure of appraisers and for the
- 27 registration of appraiser assistants that ensure protection of the public interest and comply with the
- 28 requirements of the federal Act. Education requirements for state licensed appraisers and state
- 29 certified appraisers must meet the minimum criteria established by the Appraiser Qualification
- 30 Board of the Appraisal Foundation.
- 31           (c) Establishing a professional code of responsibility for state certified appraisers and state li-
- 32 censed appraisers that is in conformance with the federal Act.
- 33           (d) Providing for registration of out-of-state appraisers as provided for under ORS 674.120.
- 34           (3) An individual may not be a state licensed appraiser or a state certified appraiser unless the
- 35 individual has achieved a passing grade upon a suitable examination equivalent to the Uniform
- 36 Certification Examination issued or endorsed by the Appraisal Qualification Board of the Appraisal
- 37 Foundation.
- 38           (4) The Appraiser Certification and Licensure Board, acting through the administrator, may is-
- 39 sue subpoenas to compel the attendance of witnesses and the production of papers, books, records,
- 40 correspondence, agreements, memoranda and other material or relevant documents in investigations
- 41 or proceedings pertaining to the powers and duties of the board.
- 42           (5) In the case of a person who refuses to respond to a subpoena issued by the Appraiser Cer-
- 43 tification and Licensure Board, the judge of the circuit court, on the application of the board ad-
- 44 ministrato, shall order compliance with the board subpoena in the same manner as a proceeding for
- 45 contempt for failure to respond to a subpoena of the court.

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**UNIT CAPTIONS**

**SECTION 24.** The unit captions used in this 2011 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 2011 Act.

**APPLICABILITY**

**SECTION 25.** The amendments to section 2, chapter 87, Oregon Laws 2010, by section 9 of this 2011 Act apply to applications for registration of an appraisal management company submitted on or after ~~September 1, 2011.~~

*January 2012*

**OPERATIVE DATE**

**SECTION 26. (1)** Sections 1 to 7 and 17 to 19 of this 2011 Act and the amendments to ORS 674.305, 674.310 and 705.141 and sections 1 to 9, chapter 87, Oregon Laws 2010, by sections 8 to 15 and 20 to 23 of this 2011 Act become operative on September 1, 2011.

**(2)** The Department of Consumer and Business Services and the Appraiser Certification and Licensure Board may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the department and board to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the department and board by sections 1 to 7 and 17 to 19 of this 2011 Act and the amendments to ORS 674.305, 674.310 and 705.141 and sections 1 to 9, chapter 87, Oregon Laws 2010, by sections 8 to 15 and 20 to 23 of this 2011 Act.

**EMERGENCY CLAUSE**

**SECTION 27.** This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2499**

1 On page 1 of the printed bill, line 3, delete "to" and insert ", 2, 3, 4, 5,  
2 6, 7, 8 and".

3 On page 4, line 27, after "completeness" insert "in relation to client  
4 specifications".

5 Delete lines 34 through 45 and delete page 5.

6 On page 6, delete lines 1 through 8 and insert:

7 **"SECTION 9.** Section 2, chapter 87, Oregon Laws 2010, is amended to  
8 read:

9 **"Sec. 2. (1)[(a)]** A person may not *[provide appraisal management*  
10 *services]* **directly or indirectly engage in or attempt to engage in busi-**  
11 **ness as an appraisal management company or advertise or represent**  
12 **that the entity is an appraisal management company unless the person**  
13 **is:**

14 **"(a)** Registered as an appraisal management company with the *[Depart-*  
15 *ment of Consumer and Business Services]* **Appraiser Certification and**  
16 **Licensure Board; or**

17 **"(b)** An appraisal management company that is a subsidiary of and  
18 **owned and controlled by a financial institution regulated by a federal**  
19 **financial institution regulatory agency, as that term is defined in ORS**  
20 **674.010.**

21 **"[(b)** *Notwithstanding ORS 674.100 (3)(a), an affiliate of a financial insti-*  
22 *tution or insurance company may not provide appraisal management services*

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1 *unless the affiliate is registered as an appraisal management company with the*  
2 *department.]*

3 “(2) A business entity may apply for registration as an appraisal man-  
4 agement company on forms prescribed by rule by the [department] board. The  
5 application must include:

6 “(a) The name, address and **phone** contact information of the entity;

7 “(b) The name, address and **phone** contact information of a controlling  
8 person of the entity;

9 “(c) If the entity is not domiciled in this state, the name and **phone**  
10 contact information for the entity’s agent for service of process in this state;

11 “(d) The name, address and **phone** contact information of any person that  
12 owns 10 percent or more of the entity;

13 “(e) A certification that:

14 “(A) The entity has a system to verify that each appraiser on the entity’s  
15 appraiser panel is licensed or certified under ORS 674.310 [*and is competent*  
16 *to perform real estate appraisal activity*];

17 “[*(B) If the entity reviews real estate appraisal activity performed by an*  
18 *appraiser, the review is conducted by another appraiser; and*]

19 “(B) The entity requires an appraiser completing an appraisal at the  
20 entity’s request to confirm that the appraiser is competent to perform  
21 the appraisal assignment before accepting the assignment;

22 “(C) The entity requires appraisers completing appraisals at the  
23 entity’s request to comply with the Uniform Standards of Professional  
24 Appraisal Practice;

25 “(D) The entity has a system in place to require that appraisals are  
26 conducted independently and without inappropriate influence or  
27 coercion as required by the appraisal independence standards estab-  
28 lished under section 129E of the Truth in Lending Act; and

29 “[*(C)*] (E) The entity maintains and retains for at least five years, or as  
30 required under ORS 674.150, a detailed record of each appraisal management

(A) cont.

1 services request the entity receives and the appraiser who performs the real  
2 estate appraisal activity contained in the request;

3 “(f) The surety bond, letter of credit or deposit required by section 3 [of  
4 *this 2010 Act*], **chapter 87, Oregon Laws 2010;**

5 “(g) Fees in an amount prescribed by rule by the [department] board,  
6 which must be sufficient to cover the costs of administering sections 1 to 8  
7 and 9 [of *this 2010 Act*], **chapter 87, Oregon Laws 2010; and**

8 “[*h*] A description of the dispute resolution process required by section 7  
9 of *this 2010 Act*; and]

10 “[*i*] (h) Any other information required by the [department] board by  
11 rule.

12 “(3) The [department] board may not issue a registration to a business  
13 entity as an appraisal management company unless:

14 “(a) **Each individual who owns 10 percent or more of the entity and  
15 the controlling person identified by the entity in the application have  
16 completed a criminal records check; and**

17 “(b) The [department] board determines that each individual who owns  
18 10 percent or more of the entity and the controlling person identified by the  
19 entity in the application:

20 “[*a*] (A) Are of good moral character; and

21 “[*b*] (B) Have never had a license, certification or registration to act  
22 as an appraiser or appraisal management company refused, denied, canceled  
23 or revoked in this state or in any other state.

24 “(4)(a) **The board shall issue a unique registration number to each  
25 appraisal management company registered under this section.**

26 “(b) **The board shall maintain a published list of appraisal manage-  
27 ment companies registered under this section.**

28 “(c) **An appraisal management company registered under this sec-  
29 tion shall disclose the company’s registration number to each ap-  
30 praiser used by the company.**



Ⓟ cont.

1        “[4] (5) An appraisal management company registration expires two  
2 years after the date of the issuance of the registration. The [department]  
3 **board** shall adopt rules establishing the requirements for renewal or reactiva-  
4 tion of a registration. The rules must **require that an appraisal man-**  
5 **agement company provide all of the information and certifications**  
6 **required for an initial application for registration under subsection (2)**  
7 **of this section in the renewal application.** [include a requirement that the  
8 appraisal management company must certify that:]

9        “[a) The company has a system to verify that each appraiser on the  
10 company’s appraiser panel is licensed or certified under ORS 674.310 and is  
11 competent to perform real estate appraisal activity;]

12        “[b) If the company reviews real estate appraisal activity performed by an  
13 appraiser, the review is conducted by another appraiser; and]

14        “[c) The company maintains and retains for at least five years, or as re-  
15 quired under ORS 674.150, a detailed record of each appraisal management  
16 services request the company receives and the appraiser who performs the real  
17 estate appraisal activity contained in the request.]”.

18        On page 7, delete lines 9 through 45.

19        On page 8, delete lines 1 through 20 and insert:

20        **“SECTION 12.** Section 5, chapter 87, Oregon Laws 2010, is amended to  
21 read:

22        **“Sec. 5. (1)** An appraisal management company or an employee, control-  
23 ling person or agent of an appraisal management company may not:

24        **“(a)** Attempt to influence the development[,] or reporting of an appraisal  
25 or appraisal review [of an appraisal or appraisal review assignment] through  
26 coercion, extortion, collusion, compensation, [instruction,] inducement, in-  
27 timidation, bribery or any other manner, including but not limited to:

28        **“(A)** Withholding or threatening to withhold timely payment for an ap-  
29 praisal;

30        **“(B)** Withholding or threatening to withhold future business for an [in-

Ⓟ

Ⓟ cont.

1 *dependent contractor*] appraiser;

2 “(C) Expressly or impliedly promising future business, promotions or in-  
3 creased compensation for an appraiser;

4 “(D) Conditioning the [*request for real estate appraisal activity*] **ordering**  
5 **of an appraisal report** or any payment on the opinion, conclusion or valu-  
6 ation to be reached, or on a preliminary estimate or opinion requested from  
7 an appraiser;

8 “(E) Requesting that an appraiser provide an estimated, predetermined or  
9 desired valuation in an appraisal report, or provide estimated values or  
10 comparable sales at any time prior to the appraiser’s completion of real es-  
11 tate appraisal activity;

12 “(F) Providing to an appraiser an anticipated, estimated, encouraged or  
13 desired value for a subject property or a proposed or target amount to be  
14 loaned to the borrower, except that a copy of the sales contract for a pur-  
15 chase transaction may be provided; or

16 “(G) Providing to an appraiser, or any entity or individual related to the  
17 appraiser, stock or other financial or nonfinancial benefits;

18 “[*H*] *Allowing the removal of an appraiser from an appraiser panel with-*  
19 *out prior written notice to the appraiser;*]

20 “[*I*] *Obtaining, using or paying for a second or subsequent appraisal or*  
21 *ordering an automated valuation model in connection with a mortgage fi-*  
22 *nancing transaction unless there is a reasonable basis to believe that the initial*  
23 *appraisal was flawed or tainted and such basis is clearly and appropriately*  
24 *noted in the loan file, or unless such appraisal or automated valuation model*  
25 *is done pursuant to an appraisal review or quality control process that is*  
26 *completed by an appraiser before or after a loan is funded; or]*

27 “[*J*] *Any other act or practice that impairs or attempts to impair an*  
28 *appraiser’s independence, objectivity or impartiality.*]

29 “(b) **Require an appraiser to accept an appraisal assignment if the**  
30 **appraiser has notified the company that the appraiser declines the**

③ cont

1 assignment because the assignment must be completed within a time  
2 frame that the appraiser, in the appraiser's professional judgment,  
3 believes does not afford the appraiser the ability to meet the  
4 appraiser's legal and professional obligations;

5 "(c) Require an appraiser to accept an appraisal assignment if the  
6 appraiser has notified the company that the appraiser declines the  
7 assignment because, in the appraiser's professional judgment, the ap-  
8 praiser does not have the necessary expertise for the assignment;

9 "(d) Prohibit lawful communications between the appraiser and any  
10 other person who the appraiser, in the appraiser's professional judg-  
11 ment, believes possesses information that would be relevant;

12 "(e) Knowingly require an appraiser to take any action that does  
13 not comply with the provisions of ORS chapter 674, the rules of the  
14 Appraiser Certification and Licensure Board or any assignment con-  
15 ditions and certifications required by the client for whom an appraisal  
16 is being performed;

17 "(f) Require an appraiser to indemnify the appraisal management  
18 company or any other party against liability, damages, losses or claims  
19 that arise out of any act or conduct of the appraisal management  
20 company or that do not arise out of the services performed by the  
21 appraiser;

22 "(g) Prohibit an appraiser from reporting the fee paid to the ap-  
23 praiser in the appraisal report;

24 "(h) Allow a person to perform an appraisal review relating to a  
25 property located in this state if the person is not an appraiser with the  
26 licensure required to perform the appraisal review;

27 "[b] (i) Substantively alter in any way a completed appraisal report  
28 submitted by an appraiser[.]; or

29 "(j) Except within the first 90 days after an appraiser is added to  
30 the company's appraiser panel, remove the appraiser from the ap-

1 In line 17, delete "September 1, 2011" and insert "January 1, 2012".

2

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(B) cont

1 praiser panel without prior written notice to the appraiser, including  
2 notice of evidence of the reason for removal.

3 "(2) [This section does not prohibit] An appraisal management company  
4 [from requesting] may request, on behalf of and with the approval of a  
5 financial institution at the request of a consumer, that an appraiser:

- 6 "(a) Provide additional information about the basis for the valuation;
- 7 "(b) Correct objective factual errors in a completed appraisal report; or
- 8 "(c) Consider the values of other comparable properties."

9 In line 37, after "may" insert "deny registration or renewal of registration  
10 to an appraisal management company or".

11 On page 9, line 5, delete "affect" and insert "have a material effect on".

12 Delete lines 6 through 11 and insert:

13 **"SECTION 18. The Appraiser Certification and Licensure Board**  
 14 **shall adopt rules requiring an appraisal management company to pro-**  
 15 **vide documentation to the board showing that the appraisal manage-**  
 16 **ment company provides training, in accordance with rules adopted by**  
 17 **the board, to employees of the appraisal management company who:**

- 18 **"(1) Select appraisers for an appraiser panel;**
- 19 **"(2) Select appraisers to perform real estate activity; or**
- 20 **"(3) Perform quality control examinations."**

21 After line 21, insert:

22 **"(i) Annual appraisal management company registry fees in an amount**  
 23 **determined by the Appraisal Subcommittee of the Federal Financial Insti-**  
 24 **tutions Examination Council as set forth in federal law."**

25 In line 26, after "penalty" insert a comma.

26 In line 27, after "\$15,000" insert "for each violation,".

27 In line 28, after "2010" insert ", or any rule adopted by the board under  
28 sections 1 to 8, chapter 87, Oregon Laws 2010".

29 On page 12, line 11, delete "September 1, 2011" and insert "January 1,  
30 2012".

(C)

(D)

HB 2499-13  
(LC 2627)  
3/25/11 (MNJ/ps)

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2499**

- 1     On page 1 of the printed bill, line 28, delete "2011" and insert "2013".
- 2     On page 2, line 3, delete "beginning July 1, 2011" and insert "ending
- 3     "June 30, 2013".
- 4     On page 8, line 18, delete "or".
- 5     In line 19, restore "; or".
- 6     In line 20, restore the bracketed material and delete "values" and insert
- 7     "prices".

8

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**2011 Legislative Session  
AGENCY FISCAL IMPACT STATEMENT FORM**

House Bill	2499	Amendment	-12 and -13
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Please indicate the fiscal status of the measure, complete the below form, and return one copy each to the Legislative Fiscal Office (LFO) and the Budget and Management Division (BAM).

<input checked="" type="checkbox"/>	<b>Fiscal Impact</b>	A fiscal impact determined to be greater than a minimal fiscal impact.
<input type="checkbox"/>	<b>Minimal Impact</b>	A fiscal impact that can be absorbed by an agency within existing agency resources.
<input type="checkbox"/>	<b>No fiscal impact</b>	The absence of an expenditure or revenue (non-tax) impact.

Effect on Expenditures (By Budget Category and Fund-type):	2011 – 2013	2013 – 2015
Personal Services – Other Funds	\$ 354,064	\$ 354,937
Services and Supplies – Other Funds	\$ 88,902	\$ 36,574
<b>Total</b>	<b>\$ 442,966</b>	<b>\$ 391,511</b>

Effect on Revenues (By Budget Category and Fund-type):	2011 – 2013	2013 – 2015
Application, Registration Fees – Other Funds	\$ 328,000	\$ 328,000
Civil Penalty Assessments – Other Funds	\$ Unknown	\$ Unknown
Audit Fees – Other Funds	\$ Unknown	\$ Unknown
<b>Total</b>	<b>\$ 328,000 +</b>	<b>\$ 328,000 +</b>

Positions/FTE (classification, step 2): see explanation for	FTE	FTE
Compliance Specialist 2 (C5247/SR 25) effective 1-1-2012	1 / 1.0	1 / 1.0
Administrative Specialist 1 (C0107/SR 17) (effective 1-1-2012)	1 / 0.50	1 / .50
PEM E (X7008/SR 33) effective 7-1-2011	1 / 0.50	1/ .25
PEM C (x7004)/SR 28) effective 7-1-2011	1 / 0.50	1/ .25

Interim Joint Committee on Ways and Means: The budgetary impact of this bill was reviewed and approved by the Interim Joint Committee on Ways and Means to be recommended to be included in the omnibus budget bill.

Yes \_\_\_\_\_ No   X  

If yes, what date(s) and Item Number(s)?

Local Mandates: Does the proposal have a fiscal or revenue mandate effect on cities, counties, or special districts that triggers evaluation under section 15, Article XI of the Oregon Constitution?

Yes \_\_\_\_\_ No   X

## Agency Fiscal Analysis:

House Bill 2499 is intended to foster appraiser independence, impartiality, objectivity and competence for the protection of Oregon consumers through regulation of individuals and entities that provide appraisal management services. Appraisal Management Companies (AMCs) are third-party brokers of real estate appraisal services.

House Bill 2499 transfers duties, functions and powers of the Department of Consumer and Business Services (DCBS) relating to AMCs to the Appraiser Certification and Licensure Board (Board) as of January 1, 2012. The Board is a semi-independent State agency.

The Dodd-Frank Wall Street Reform and Consumer Protect Act (Act) became law on July 21, 2010, and mandates AMCs to be subject to registration and supervision by State appraiser certifying and licensing agencies. The Act imposes federal mandates for minimum requirements for AMCs. The Board believes HB 2499 will bring Oregon into conformity with the Federal Act.

In addition to registration, the Board would have the requisite responsibility of enforcing statutory and administrative rule requirements as well as federal statutes and regulations. AMC application, registration and renewal fees would be set by the Board through administrative rule. Fee amounts would be solely for the purpose of covering the costs associated with implementation and administration of the proposed legislation. The Board would collect monies associated with AMC application fees, registration and renewal fees, federally mandated AMC registry fees, and any assessed civil penalties imposed as a result of violations of Oregon law, administrative rules, and/or federal mandates. The Board currently has processes in place for the collection of similar fees associated with licensing and certifying of real estate appraisers and registering appraiser assistants.

Regulation of AMCs is relatively new. About 20 states currently have AMC legislation and a number of states have AMC legislation pending. The provisions of proposed HB 2499 are similar to those of other states.

The Board must create and adopt rules and procedures for registration and renewal of AMCs, and develop an enforcement program to process and investigate complaints and conduct compliance audits to ensure compliance with AMC statutes, rules and regulations. The Board will be subject to bi-annual federal audits to ensure compliance with federal laws and regulations pertaining to AMC regulation. The Board currently undergoes similar federal audits for its appraiser programs.

The overall impact on the Board will be to broaden its consumer protection effectiveness by expanding its regulatory oversight to also include AMCs.

The specific impacts will be both near term and long term.

Below is a detailed explanation the anticipated FTE to implement the AMC program:

### **2011-2013 Biennium**

PEME .50 FTE (7/1/2011 – 12/31/2012) / .25 FTE (1/1/2013 – 6/30/2013) (Existing Board staff)  
PEMC .50 FTE (7/1/2011 – 12/31/2012) / .25 FTE (1/1/2013 – 6/30/2013) (Existing Board staff)  
Compliance Specialist 2 (CS2) 1.0 FTE effective 1/1/2012  
Administrative Specialist 1 (AS1) .50 FTE effective 1/1/2012



## **2013-2015 Biennium**

PEME .25 FTE

PEMC .25 FTE

Compliance Specialist 2 (CS2) 1.0 FTE

Administrative Specialist 1 (AS1) .50 FTE

### **Near Term Impacts:**

Upon transfer, the PEME and PEMC, would facilitate program development to ensure a smooth implementation on January 1, 2012. Because this program is relatively new, DCBS is still in the early implementation stages of the program. The Board anticipates a minimum of six months to develop and implement rules and procedures for registration, renewal, processing complaints, and compliant audits. Included in the development costs are:

- 1) establishing professional contracted services for the development of a database to track AMC registration, renewal and enforcement;
- 2) negotiating an agreement to obtain new furniture (workstations and chairs), new computer hardware, software and setup, and office supplies for the two new positions;
- 3) coordinating office modifications to accommodate new staff; and
- 4) staff hours to: conduct stakeholder meetings; facilitate rules advisory committee meetings; draft administrative rules; conduct permanent rule making hearing(s); create forms for use in registration, renewal and filing complaints; develop procedures for processing registrations, renewals and complaints; develop procedures for conducting criminal background checks on "controlling persons"; develop procedures for conducting audits; develop procedures for reviewing and investigating complaints; and interview, hire and train new staff.

An outlay of considerable funds/expenditures is anticipated to facilitate these tasks. The Board recently purchased new office furniture and new computer equipment that supports anticipated costs for these items.

The Board currently has sufficient funds in reserve to cover initial expenditures; however, access and use of any reserve funds must be authorized by the Board. It is anticipated that within 60-90 days of program implementation, start-up expenditures may be recouped through the transfer of AMC application and registration fees collected by DCBS through December 31, 2011.

As of January 1, 2012, AMC technical staff (CS2 (1.0 FTE) and AS1 (.50 FTE), would be added. A learning curve and close oversight is assumed, therefore, the PEME and PEMC would remain at .50 FTE during the first year after technical staff is hired. Initially, technical staff would be responsible for:

- 1) reviewing and processing of new AMC registration applications which requires verifying compliance with Oregon law, administrative rules and the Federal Act;
- 2) conducting criminal background checks on "controlling persons",

- 3) reviewing and processing AMC registration renewals;
- 4) reviewing and investigating complaints,
- 5) auditing AMC companies to verify compliance with Oregon statute and administrative rules and the Federal Act.

Although the HB 2499 does not require the audit of each company every registration cycle, the Board knows from experience that compliance audits are an integral part of effective regulation. Therefore, the Board anticipates that audits will be scheduled on a regular basis, beginning April 1, 2012, with a goal of conducting no less than two audits per quarter.

Based on information obtained from DCBS, less than 7% of the AMCs registered to date are located in the State of Oregon which will require considerable resources. Initially, AMCs subject to audit would be selected based on complaint history or other "red flags."

By January 1, 2013, it is anticipated that both the PEME and PEMC duties could be reduced to .25 FTE as technical staff become proficient.

#### Long Term Impacts:

It is anticipated that the staffing levels as of June 30, 2013, will continue.

The most significant expenditures long term will be the audit process because of the location of the vast majority of the AMCs. The Board may consider incorporating some audit production requirements into the renewal process to expedite the process. Currently, the Board utilizes an audit process when an appraiser makes application; however, this process may not be suitable for AMC audits.

As the Board discovers areas of noncompliance, there may unforeseen expenditures for professional services for Department of Justice legal counsel and Administrative Hearings costs. The Board cannot anticipate if revenue from assessed civil penalties will offset these costs.

There will also be ongoing costs for computer tech support and office services and supplies for the additional positions.

The difference in income as compared to expenditures is greater than is typically the case due to uncertainties in the forecasting of the number of AMC registrations and legal costs associated with implementation of the legislation.

#### **PROJECTED REVENUE 2011-2013**

The Board has obtained preliminary figures from DCBS to establish a baseline for revenue projections. According to DCBS information provided to date, DCBS has processed and registered 87 applicants and collected \$285,500 in application and registration fees.

The number of anticipated AMC registrations is based on Oregon's population. In researching other states that have implemented an AMC regulatory program, the number of AMCs registered is approximately one per 55,000 people. The application fee is based upon current ACLB administrative rules for application fees.

Currently, both the AMC application and registration fee established by DCBS are set on a sliding scale based upon the number of appraisals ordered. It seems reasonable to apply a sliding scale; however, the Board will be required to review the current fee structure to determine whether changes may be necessary to cover the projected costs of the program.

The anticipated number of new applicants is unknown. The Board is estimating approximately 100 companies currently do business in Oregon. Based on that estimate, there are potentially 13 additional companies to be registered. Expected additional revenues are difficult to project, however, based on the current number of registrants and revenues collected, the average per registrant is \$3,282. Applying that average, the additional revenue would be \$42,666. For purposes of this Fiscal Impact Statement, the Board estimates that 2011-2013 revenues including funds transferred from DCBS and any new application and registration fees, will be approximately \$328,000.

Based on the revenue shortfall, it seems reasonable to assume that the application and registration fee structure must be modified to ensure that the cost of operation is maintained.

In addition to the projected revenues noted above, there may be additional indeterminate revenues in the form of assessed civil penalties. The amount revenue to be generated is unknown and will be influenced by the number and types of violations identified during the course of complaint investigations and audits. Again, the Board cannot estimate at this time the amount of civil penalties that may be collected and if any civil penalties collected will offset costs for Department of Justice legal counsel and Administrative Hearings.

#### **PROJECTED REVENUE 2013-2015**

Assuming that the number of registrants remains steady through, 2015, the anticipated revenue utilizing the existing DCS fee structure, will not vary significantly from the 2011-2013 projection of \$328,000.

The Board will be required to monitor the costs of operation and make necessary modifications to ensure that revenues meet expenditures.

As the program develops and compliance is fully implemented, the Board may see an increase in the amount of civil penalties assessed and collected. This may have a positive affect on the forecasted revenues; however, the Board cannot estimate at this time the amount of civil penalties that may be collected and if any civil penalties collected will offset costs for Department of Justice legal counsel and Administrative Hearings.

Agency Name	Appraiser Certification and Licensure Board
Preparer Name/Title	Robert A. Keith - Administrator
Preparer Phone #	(503) 485-2555 ext. 10
Date	March 30, 2011



AMC 201 2013 Salary Benefit Projections with Salary- LA Increases (DRAFT)

3/21/11 15 PM

2009-2011 Salary & Benefit Projections

408,234

3111 Regular Employees 2.75 / 2.5 FTE 239,086

PEIME - Administrator (.5 FTE 1st year/.25 2nd year) 66,372  
 Compliance Spec 2 1 FTE 79,440  
 PEIMC (Office Manager) .25 FTE 32,590  
 AS1 (Licensing) 1 FTE 60,684

3221 SS/Med Employer 7.65% 18,435

3210 PERS Contributions 25,857

SS/Med Employer Portion - 7.65% 25,857  
 0

3241 Workers Compensation 126

4050 Med/Dental Contributions 110,391

Insurance Premiums Per FTE (Average) Per March 2011 Billing

These costs are covered in full  
 Administrative 14  
 Medical 1,338  
 Dental 111  
 Vision 20  
 Total 1,483

The cost for .5 FTE is approximately \$660

Standard (Life, Disability, LTC, etc.) Varies (Primarily Self-Paid)

Please refer to the BenefitHelp Billing and PEBB 2011 info for clarification.

4675 Pension Obligation Bond(POB) Assessment 5.95% 14,338

**AMC Fiscal Impact Projections  
2011-2013 2013-2015**

**DRAFT**

	<u>2011-2013 Projections</u>	<u>2013-2015 Projections</u>	
Expense			
3000 · Payroll Expenses	221,558	207,754	See Salary & Benefit Projections
3111 · Regular Employees			
3112 · Board and Commission Per Diem	180	200	Based on 6% of ACLB 2009-2011 Budget of \$3,000 with 10% increase for 2013-2015
3120 · Temporary Employees	0	0	See Salary & Benefit Projections
3210 · PERS Contributions	23,983	22,514	See Salary & Benefit Projections
3215 · PERS Social Security Rev Acct	40	40	Consistent with past ACLB expenditures
3221 · Social Security/Medicare Taxes	17,099	16,052	See Salary & Benefit Projections
3241 · Workers' Comp Assessments	96	96	See Salary & Benefit Projections
<b>Total 3000 · Payroll Expenses</b>	<u>262,956</u>	<u>246,656</u>	
4000 · Payroll Service Fees	158	174	Based on 6% of ACLB 2011-2013 Budget of \$2,640 with 10% increase for 2013-2015
4010 · Accountant Service Fees	380	418	Based on 6% of anticipated ACLB expenditures of \$6,331 with 10% increase for 2013-2015
4050 · State Med/Dental Contributions	78,030	78,030	See Salary & Benefit Projections
4100 · Travel			
4100-1 · In-State Travel			
4101 · In-state Meals & Lodging	144	158	Based on 6% of anticipated ACLB expenditures of \$2,400 with 10% increase for 2013-2015
4103 · In-state Private Vehicle	306	337	Based on 6% of anticipated ACLB expenditures of \$5,100 with 10% increase for 2013-2015
4104 · In-state Travel Miscellaneous	7	8	Based on 6% of ACLB 2009-2011 Budget of \$120 with 10% increase for 2013-2015
4110 · In-state Registration Fees	3	3	Based on 6% of ACLB 2009-2011 Budget of \$48 with 10% increase for 2013-2015
<b>Total 4100-1 · In-State Travel</b>	<u>460</u>	<u>506</u>	
4150-1 · Out-of-State Travel			
4151 · O/S Meals & Lodging	6,000	9,600	10 Trips @ \$600 per trip ( 2 Audits per Quarter Beginning 4-1-12) / 16 trips in 2013-2015
4152 · O/S Air Transportation	3,500	5,600	10 Tickets @ \$350 / 16 in 2013-2015
4153 · O/S Ground Transportation	1,050	1,680	30 days Car Rental @ \$35 per day (allowing 3 ground days for each trip) / 48 days in 2013-2015
4154 · O/S Miscellaneous	1,500	1,500	Allowance or unanticipated expenses
<b>Total 4150-1 · Out-of-State Travel</b>	<u>12,050</u>	<u>18,380</u>	
<b>Total 4100 · Travel</b>	<u>12,510</u>	<u>18,886</u>	

**AMC Fiscal Impact Projections  
2011-2013 2013-2015**

**DRAFT**

	2011-2013 Projections	2013-2015 Projections	
4200 · Office Supplies	1,504	554	Based on 6% of ACLB 2009-2011 Budget of \$8,400 + \$1,000 for Start Up costs with 10 % increase for 2013-2015
4202 · Office Services	17	19	Based on 6% of anticipated ACLB expenditures of \$290 with 10% increase in 2013-2015
4202 · Equipment Rental	690	759	Based on 6% of anticipated ACLB expenditures of \$11,500 with 10% increase in 2013-2015
4205 · Equipment Purchase (under \$250)	36	40	Based on 6% of ACLB 2009-2011 Budget of \$600 with 10% increase in 2013-2015
4205 · Equipment Purchase (\$250-\$5,000)			See Category No. 4999 Expend. Property/Small Equip
4210 · Postage	348	383	Based on 6% of anticipated ACLB expenditures of \$5,800 with 10% increase in 2013-2015
4210-1 · Regular	348	383	
<b>Total 4210 · Postage</b>	<b>348</b>	<b>383</b>	
4251 · Dues & Subscriptions	150	165	Based on 6% of anticipated ACLB expenditures of \$2,500 with 10% increase for 2013-2015
4252 · Publications	72	79	Based on 6% of anticipated ACLB expenditures of \$1,200 with 10% increase in 2013-2015
4252-1 · Newsletter Publication	72	79	Based on 6% of anticipated ACLB expenditures of \$1,200 with 10% increase in 2013-2015
4252-2 · Misc Publications (rules etc)	0	0	None Anticipated
4252-3 · Legislative Publications	0	0	None Anticipated
<b>Total 4252 · Publications</b>	<b>72</b>	<b>79</b>	
4253 · Recruitment Advertising	2,000	0	Estimated Recruitment Costs
4300 · Telecommunications/Tech Service			
4301 · Telephone-Monthly Bill	2,500	0	Estimate for new phones and phone lines
4301-1 · Telephone Equipment	360	396	Based on 6% of ACLB 2009-2011 Budget of \$6,000 with 10% increase in 2013-2015
4301 · Telephone-Monthly Bill - Other	2,860	396	
<b>Total 4301 · Telephone-Monthly Bill</b>	<b>2,860</b>	<b>396</b>	
4302 · Internet Service	302	332	Based on 6% of ACLB 2009-2011 Budget of \$5,040 with 10% increase in 2013-2015
<b>Total 4300 · Telecommunications/Tech Service</b>	<b>3,162</b>	<b>728</b>	
4350 · Data Processing			
4350-1 · DP Supplies	230	0	Warranties - Based on ACLB 2009-2011 Costs of \$115 per computer
4350-2 · DP Software	20,000	0	To cover D-Base set up costs and website intergration
4350-3 · DP Hardware	7,000	0	2 new Work Stations/Server Updates/Misc. Hdware Est. \$3,500 per work station
4351 · DP Services	3,600	0	New Computer Installation @ \$1,800 per machine (costs were \$1,600 as of July 1, 2009)

AMC Fiscal Impact Projections  
2011-2013 2013-2015

**DRAFT**

	2011-2013 Projections	2013-2015 Projections	
4321 · Maintenance Agreements	302	0	Based on anticipated ACLB expenditures of \$151 per machine
Total 4350 · Data Processing	<u>31,132</u>	<u>0</u>	
4402 · Professional Development	600	600	Est. \$300 per course x 2 employees
4419 · Tuition/Registration	100	100	
4426 · Manuals/Materials	700	700	Est. \$100 x 2 employees
Total 4402 · Professional Development	<u>700</u>	<u>700</u>	
4500 · Professional Services	1,980	1,980	Based on 6% of ACLB 2009-2011 Budget of \$15K per yr with 10% increase in 2013-2015
4501 · Computer Tech Support	0	0	
4502 · Expert Witness/Consulting	900	990	None Anticipated
4503 · Legislative Assistance Fees	0	0	
4504 · Transcription Service	96	106	Based on 6% of ACLB 2009-2011 Budget of \$15,000 with 10% increase in 2013-2015
4505 · Subpoena Fee	0	0	None Anticipated
4506 · Enforcement-Compliance Review	0	0	Consistent with ACLB 2009-2011 Budget in 10% increase in 2013-2015
4507 · Experience Audits	0	0	None Anticipated
Total 4500 · Professional Services	<u>2,796</u>	<u>3,076</u>	NA
4510 · Sec. of State Audit Fees	627	690	Based on 6% of actual ACLB expenditures of \$10,450 with 10% increase in 2013-2015
4550 · Attorney General Legal Fees	9,000	9,900	Based on 10% of ACLB 2009-2011 Budget of \$90,000 with 10% increase in 2013-2015
4600 · State Govt Service Charges	600	660	(Anticipating more legal counsel required)
4601 · OAH Charges	0	0	Based on 6% of ACLB 2009-2011 Budget of \$10,000 with 10% increase in 2013-2015
4602 · Secretary of State File Storage	1,500	1,650	No Storage Costs Anticipated
4603 · Secretary of State - OAR Charges	10,227	11,250	Consistent with ACLB 2009-2011 Budget, but could be low because of substantial new OARs to be implemented - 10% increase in 2013-2015
Total 4600 · State Govt Service Charges	<u>10,227</u>	<u>11,250</u>	
4650 · Intraagency Charges	0	0	Use Category 4600 for all future entries
4675 · POB Assessment	13,299	12,485	See Salary & Benefit Projections
4800 · Facility Expenses			



**AMC Fiscal Impact Projections  
2011-2013 2013-2015**

**DRAFT**

	<u>2011-2013 Projections</u>	<u>2013-2015 Projections</u>	
4800-1 · Facility Lease	6,463	4,641	Based on \$2,000 est. for office modification and 6% of anticipated ACLB expenditures of \$74,376 in 2011-2013 and \$77,346 in 2013-2015
4800-2 · Facility - Signage & Mtnc	17	19	Based on 6% of anticipated ACLB expenditures of \$275 with 10% increase in 2013-2015
4800-3 · Facility - Security	79	87	Based on 6% of anticipated ACLB expenditures of \$1,320 with 10% increase in 2013-2015
4800-4 · Facility - Janitorial	317	349	Based on 6% of anticipated ACLB expenditures of \$5,280 with 10% increase in 2013-2015
<b>Total 4800 · Facility Expenses</b>	<u>6,876</u>	<u>5,095</u>	
4999 · Expend. Prop/Small Equip \$250-5000	1,500	0	Printers, chairs, etc.
5100 · Office Furniture and Fixtures	3,500	0	Two work stations and accessories
6200 · Risk/Liability Insurance Charge	216	238	Based on 6% of anticipated ACLB expenditures of \$1,800 yr. with 10% increase in 2013-2015
6736 · Moving Expenses	0	0	No Relocation Anticipated
6910 · Bank Charges	600	660	2013-2015
8000 · Federal Registry	0	0	See 1008 (same figure)
9000 · Merchant Statement - VISA/MC	480	528	Based on 6% of ACLB 2009-2011 anticipated expenditures of \$8,000 with 10% increase in 2013-2015
9500 · Miscellaneous	0	0	items are allocated to specific categories
<b>Total Expense</b>	<u>442,966</u>	<u>391,511</u>	
<b>Net Income</b>	<u>(442,966)</u>	<u>(391,511)</u>	

**2011 Legislative Session  
AGENCY FISCAL IMPACT STATEMENT FORM**

Agency Name: Department of Consumer & Business Services  
Preparer Name/Title: Carey Thompson, Budget Director  
Preparer Phone #: 503 947-7381  
Date Submitted: 3/28/11

Measure #: HB 2499 Version: -12, -13

- No fiscal impact**     The absence of an expenditure or revenue (non-tax) impact.  
 **Minimal Impact**     A fiscal impact that can be absorbed with existing agency resources.  
 **Fiscal Impact**     A fiscal impact determined to be greater than a minimal fiscal impact.

Is the bill anticipated by the Governor's Recommended Budget as a Policy Option Package? If yes, please identify the Policy Option Package name and number in your written analysis.

Yes \_\_\_\_\_ No   X  

Does the proposal have a fiscal or revenue mandate effect on cities, counties, or special districts that triggers evaluation under Section 15, Article XI of the Oregon Constitution?

Yes \_\_\_\_\_ No   X  

**AGENCY WRITTEN ANALYSIS:**

The Oregon Legislature adopted HB 3624 during the 2010 supplemental session, requiring appraisal management companies (AMC) to register with the Department of Consumer and Business Services (DCBS) by January 1, 2011. As of March 1, 2011, there were 85 companies that have been issued a two-year registration.

In addition to making some regulatory amendments, HB 2499 transfers the responsibility for regulating AMC's from the DCBS to the Oregon Appraiser Certification and Licensure Board (ACLB).

When HB 3624 was adopted, DCBS received no additional position or expenditure authority to administer the program.

DCBS borrowed funds from our CBS fund for start-up costs until funds were received through registrations. We also utilized staff from other program areas and equipment to implement the program.

DCBS set up a tiered fee structure to provide for start-up costs and to fund the program through the first two-year registration period. An application fee, a registration fee, and an audit fee were established through administrative rule. The AMC must also pay the actual cost of the criminal background check(s) for each subject individual. DCBS utilized existing equipment (computer, supplies, and a work station) to help minimize costs to the program. Additionally, DCBS has worked with ACLB on the implementation of the AMC program and DCBS will continue to work with them to ensure a smooth transition.

Under HB 2499, DCBS would transfer all AMC program responsibility and records to the ACLB. We assume both our information technology staff and accounting staff would work with ACLB staff to ensure a smooth transfer of all registration and accounting processes and records. Because DCBS used licensed software to maintain the registration data, if the ACLB does not have the same software, they may need to integrate the AMC registration data into their existing licensing system.

We estimate a total of 120 hours of DCBS staff time needed to work with ACLB staff to accomplish transition of the AMC program. While we would accomplish this work with existing staff, we would charge the AMC program account for the amount of staff time required. Assuming an average hourly rate of \$30 for staff time, we anticipate a cost of \$3,600.

Additionally, DCBS would have to modify our website indicating the transfer of the program and conduct rulemaking to repeal all AMC administrative rules. We estimate this to take approximately 40 hours of staff time. Again, assuming an hourly rate of \$30 for staff time, we anticipate a cost of \$1,200.

We also assume there may be a need to enter into an interagency agreement with ACLB in the event they are not ready to assume all tasks in September. We would negotiate the agreement at that time to allow DCBS to be compensated for any further assistance provided to ACLB until they could fully assume the administration of the AMC program.

HB 2499 becomes operative September 1, 2011, but the bill allows DCBS and the ACLB to take actions necessary before that date. DCBS would transfer the ending fund balance to ACLB. Taking into account the costs to regulate the program until the time of transfer and provide staff time required to transition the AMC program, current projections estimate the ending fund balance for the program at approximately \$160,000 as of September 1, 2011. The final balance may change as estimated expenditures and revenue projections may change.

As previously noted, DCBS received no additional limitation or position authority for the AMC program. As such, we do not expect to transfer any positions to ACLB.

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The -12 amendments to HB 2499 allow an AMC to do business in Oregon without registration if the AMC is a subsidiary of a bank or credit union, and allows ACLB to set AMC training standards in administrative rule.

The amendments require an AMC to get confirmation from the appraiser that he or she is competent to take a particular job and prohibits an AMC from requiring an appraiser from accepting an appraisal assignment if the appraiser tells the company that the turnaround time is too short to meet legal and professional obligations.

Additionally, the amendments allow an AMC to request an appraiser to make corrections or consider comparable properties, as long as the consumer asks the financial institution, and the institution approves the request.

Additionally, the -12 amendments change the program transfer date to January 1, 2012. Current projections estimate the ending fund balance for the program at approximately \$130,000 as of December 1, 2011. The final balance may change as estimated expenditures and revenue projections may change.

HB 2499-12 results in no change to fiscal impact to DCBS.

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The -13 amendments clarify that appraisers may consider the "price" of comparable properties when preparing an appraisal in lieu of the "value" of such properties.

Additionally, the -13 amendments change the biennium from which the ending fund balance is transferred. The ending fund balance shall be transferred in the biennium ending June 30, 2013 instead of the current biennium, ending Jun 30, 2011.

Based on the above assumptions, HB 2499-13 results in no change to the fiscal impact to DCBS

**Effect on Expenditure (by Fund and Category):**

	<u>General Fund</u>	<u>Lottery Funds</u>	<u>Other Funds</u>	<u>Federal Funds</u>	<u>TOTAL FUNDS</u>
<b>2011-13 Biennium</b>					
Personal Services	\$ -	\$ -	\$ 4,800	\$ -	\$ 4,800
Services and Supplies	\$ -	\$ -	\$ -	\$ -	\$ -
Special Payments	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Outlay	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Construction	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 4,800</b>	<b>\$ -</b>	<b>\$ 4,800</b>

	<u>General Fund</u>	<u>Lottery Funds</u>	<u>Other Funds</u>	<u>Federal Funds</u>	<u>TOTAL FUNDS</u>
<b>2013-15 Biennium</b>					
Personal Services	\$ -	\$ -	\$ -	\$ -	\$ -
Services and Supplies	\$ -	\$ -	\$ -	\$ -	\$ -
Special Payments	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Outlay	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Construction	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

**Effect on Revenues (by Fund):**

	<u>General Fund</u>	<u>Lottery Funds</u>	<u>Other Funds</u>	<u>Federal Funds</u>	<u>TOTAL FUNDS</u>
<b>2011-13 Biennium</b>	\$ -	\$ -	\$ (130,000)	\$ -	\$ (130,000)
<b>2013-15 Biennium</b>	\$ -	\$ -	\$ -	\$ -	\$ -

**Effect on Position(s) / FTE(s):**

<u>Months of Impact</u>		<u>2011-13 Position Count</u>	<u>2011-13 FTE</u>	<u>2013-15 Position Count</u>	<u>2013-15 FTE</u>
<u>2011-13</u>	<u>2013-15</u>				

Please complete detail Personal Services information using "PS Calculation" tab.

**Written Analysis:**

The revenue impact results from transferring the estimated fund balance of the Appraisal Management Program account at the time of the transfer. Currently estimated at \$150,000 as of 9/1/11.

Is the bill anticipated by the Governor's Recommended Budget as a Policy Option Package? If yes, please identify the Policy Option Package name and number in your written analysis.  Yes  No

Does the proposal have a fiscal or revenue mandate effect on cities, counties, or special districts that triggers evaluation under section 15, Article XI of the Oregon Constitution?  Yes  No

No fiscal impact	Preparer Name/Title
Minimal impact	Preparer Phone #
Fiscal impact	Date Submitted

AGENCY NAME \_\_\_\_\_

Measure Number-Version \_\_\_\_\_

**FISCAL IMPACT OF PROPOSED LEGISLATION****Measure: HB 2499 - A**Seventy-Sixth Oregon Legislative Assembly – 2011 Regular Session  
Legislative Fiscal Office

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Prepared by: Kim To  
Reviewed by: Steve Bender, John Terpening  
Date: 4/14/2011

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**Measure Description:**

Transfers duties, functions and powers of Department of Consumer and Business Services relating to appraisal management companies to Appraiser Certification and Licensure Board.

**Government Unit(s) Affected:**

Department of Consumer and Business Services, Appraiser Certification and Licensure Board

**Summary of Fiscal Impact:**

See Analysis

**Local Government Mandate:**

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

**Analysis:**

House Bill 2499 transfers the registration of appraisal management companies (AMC) from the Department of Consumer and Business Services (DCBS) to the Appraiser Certification and Licensure Board (ACLB). The bill specifies that only DCBS records and property relating to appraisal management companies (AMC), not employees, will be transferred to the Appraiser Certification and Licensure Board. The bill also includes regulatory modifications to the AMC program. HB 2499 becomes operative January 1, 2012, but the bill allows DCBS and the ACLB to take actions necessary before that date. The bill contains an emergency clause and is effective on passage.

This bill will align state regulations with federal requirements. The Dodd-Frank Wall Street Reform and Consumer Protect Act became law on July 21, 2010. This Act specifies minimum requirements for regulating AMCs, and mandates AMCs to be subject to registration and supervision by state appraiser certifying and licensing agencies.

If this bill passes, the unexpended balances of amounts authorized to be expended by DCBS for the administration of appraisal management companies for the biennium ending June 30, 2013 are to be transferred to ACLB. DCBS estimates the fund balance for the AMC program at approximately \$160,000 as of September 1, 2011, when the program would be transferred to the ACLB. Note that balance transfer expenditure and revenue amounts are based on March 2011 projections. These numbers will vary slightly depending on exact date of transfer, and actual expenditures and fees collected.

**Department of Consumer and Business Services (DCBS)**

During the 2010 supplemental session, the Legislative Assembly adopted HB 3624 requiring appraisal management companies (AMC) to register with DCBS by January 1, 2011. When HB 3624 (2010) was adopted, DCBS received no additional expenditure limitation or position authority to administer the program. DCBS used existing staff and resources to implement the program. Because of this fact, no expenditure limitation or position authority will need to be phased out of the DCBS budget.

DCBS set up a tiered fee structure to provide for start-up costs, and to fund the program through the first two-year registration period. An application fee, a registration fee and an audit fee were established

through administrative rule. AMCs paid the actual cost of the criminal background checks. DCBS worked with ACLB on the implementation of the AMC program, and DCBS information technology and accounting staff will work with ACLB staff to ensure a smooth transfer of all registration and accounting processes and records. DCBS will conduct rulemaking to repeal all AMC administrative rules, and modify the agency's website to notify AMCs of the transfer of the program. Although DCBS will use existing staff and resources to work with ACLB to conduct these transition activities, DCBS anticipates charging the AMC program account for the amount of staff time and resources required. DCBS estimates this transition cost to be approximately \$4,800. The estimated \$160,000 ending balance transfer amount previously quoted includes this cost.

#### Appraiser Certification and Licensure Board (ACLB)

Initially, ACLB anticipates using existing staff during the first phase of the transition process, then establishing two new positions (1.50 FTE) to support the administration of the AMC program. ACLB anticipates establishing a Compliance Specialist 2 position (1.00 FTE) and an Administrative Specialist 1 position (0.50 FTE) to develop and implement rules and procedures for registering and renewing AMCs, processing complaints, and conducting compliant audits. In addition to Personal Services, and related Services and Supplies costs, other expenditures include the development of a database to track AMC registration, renewal and enforcement. ACLB estimates total AMC program cost to be \$442,966 Other Funds for the 2011-13 biennium and \$391,511 Other Funds for the 2013-15 biennium. The Board currently has sufficient funds in reserve to cover initial expenditures.

ACLB projects revenue to be approximately \$328,000 per biennium. This revenue projection is based on the current DCBS fee structure. ACLB anticipates reviewing the current fee structure to determine whether changes may be necessary to cover the projected costs of the program.

As the program develops and compliance is fully implemented, ACLB may also realize revenue from civil penalties assessed and collected. At this time, revenue from civil penalties, as well as the cost of Department of Justice legal counsel and administrative hearings cannot be predicted.

Note that the Appraiser Certification and Licensure Board is a semi-independent state agency subject to ORS 182.456 to 182.472. The agency's budget is not subject to Executive Branch review, or approval or modification by the Legislative Assembly.

Example 6:

# Agency Fiscal Impact Statements

## Indeterminate

## Senate Bill 1577

Sponsored by Senators ROSENBAUM, BATES; Senators BEYER, BURDICK, COURTNEY, DINGFELDER, HASS, MONROE, SHIELDS, VERGER (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**.

Requires state agencies to participate in Oregon Prescription Drug Program subject to exceptions. Authorizes administrator of Oregon Prescription Drug Program to contract with pharmacy benefit manager. Requires administrator to contract with entity to negotiate with drug manufacturers to extend rebates to participants in program. Directs Oregon Health Authority to apply for federal approval necessary to obtain federal financial participation in costs of drugs purchased through program.

Declares emergency, effective on passage.

### A BILL FOR AN ACT

1  
2 Relating to prescription drugs; creating new provisions; amending ORS 414.312; and declaring an  
3 emergency.

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

5 **SECTION 1.** ORS 414.312 is amended to read:

6 414.312. (1) As used in ORS 414.312 to 414.318:

7 (a) "Pharmacy benefit manager" means an entity that negotiates and executes contracts with  
8 pharmacies, manages preferred drug lists, negotiates rebates with prescription drug manufacturers  
9 and serves as an intermediary between the Oregon Prescription Drug Program, prescription drug  
10 manufacturers and pharmacies.

11 (b) "Prescription drug claims processor" means an entity that processes and pays prescription  
12 drug claims, adjudicates pharmacy claims, transmits prescription drug prices and claims data be-  
13 tween pharmacies and the Oregon Prescription Drug Program and processes related payments to  
14 pharmacies.

15 (c) "Program price" means the reimbursement rates and prescription drug prices established by  
16 the administrator of the Oregon Prescription Drug Program.

17 (2) The Oregon Prescription Drug Program is established in the Oregon Health Authority. The  
18 purpose of the program is to:

19 (a) Purchase prescription drugs, replenish prescription drugs dispensed or reimburse pharmacies  
20 for prescription drugs in order to receive discounted prices and rebates;

21 (b) Make prescription drugs available at the lowest possible cost to participants in the program  
22 as a means to promote health;

23 (c) Maintain a list of prescription drugs recommended as the most effective prescription drugs  
24 available at the best possible prices; and

25 (d) Promote health through the purchase and provision of discount prescription drugs and co-  
26 ordination of comprehensive prescription benefit services for eligible entities and members.

27 (3) The Director of the Oregon Health Authority shall appoint an administrator of the Oregon  
28 Prescription Drug Program. The administrator may:

**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 (a) Negotiate price discounts and rebates on prescription drugs with prescription drug man-  
2 ufacturers or group purchasing organizations;

3 (b) Purchase prescription drugs on behalf of individuals and entities that participate in the  
4 program;

5 (c) Contract with a prescription drug claims processor to adjudicate pharmacy claims and  
6 transmit program prices to pharmacies;

7 (d) Determine program prices and reimburse or replenish pharmacies for prescription drugs  
8 dispensed or transferred;

9 (e) Adopt and implement a preferred drug list for the program;

10 (f) Develop a system for allocating and distributing the operational costs of the program and any  
11 rebates obtained to participants *[of]* in the program; and

12 (g) Cooperate with other states or regional consortia in the bulk purchase of prescription drugs.

13 (4) The following individuals or entities may participate in the program:

14 (a) *[Public Employees' Benefit Board, Oregon Educators Benefit Board and]* Public Employees  
15 Retirement System;

16 (b) Local governments as defined in ORS 174.116 and special government bodies as defined in  
17 ORS 174.117 that directly or indirectly purchase prescription drugs;

18 (c) Oregon Health and Science University established under ORS 353.020;

19 *[(d) State agencies that directly or indirectly purchase prescription drugs, including agencies that  
20 dispense prescription drugs directly to persons in state-operated facilities;]*

21 *[(e)]* (d) Residents of this state who lack or are underinsured for prescription drug coverage;

22 *[(f)]* (e) Private entities; and

23 *[(g)]* (f) Labor organizations.

24 (5) The state agency that receives federal Medicaid funds and is responsible for implementing  
25 the state's medical assistance program may not participate in the program.

26 (6)(a) **Except as provided in subsection (5) of this section, state agencies that directly or  
27 indirectly purchase prescription drugs, including agencies that dispense prescription drugs  
28 directly to persons in state-operated facilities, shall participate in the program.**

29 (b) **A state agency is exempt from the requirements of this subsection only if the agency  
30 can demonstrate to the administrator that the availability of federal programs or the  
31 agency's other purchasing arrangements will result in greater discounts and aggregate cost  
32 savings than would be realized through participation in the program.**

33 (c) **A state agency that contracts with a health maintenance organization, as defined in  
34 ORS 750.005, to provide coverage that includes prescription drugs may not require the or-  
35 ganization to participate in the program.**

36 *[(6)]* (7) The administrator may establish different program prices for pharmacies in rural areas  
37 to maintain statewide access to the program.

38 *[(7)]* (8) The administrator may establish the terms and conditions for a pharmacy to enroll in  
39 the program. A licensed pharmacy that is willing to accept the terms and conditions established by  
40 the administrator may apply to enroll in the program.

41 *[(8)]* (9) *[Except as provided in subsection (9) of this section,]* The administrator may not:

42 *[(a) Contract with a pharmacy benefit manager;]*

43 *[(b)]* (a) Establish a state-managed wholesale or retail drug distribution or dispensing system;

44 or

45 *[(c)]* (b) Require pharmacies to maintain or allocate separate inventories for prescription drugs

1 dispensed through the program.

2 ~~[(9)]~~ **(10)** The administrator shall contract with one or more entities to perform any of the  
 3 functions of the program, including but not limited to:

4 (a) Contracting with a pharmacy benefit manager and directly or indirectly with such pharmacy  
 5 networks as the administrator considers necessary to maintain statewide access to the program.

6 (b) Negotiating with prescription drug manufacturers on behalf of the administrator **on the ex-**  
 7 **tension of drug manufacturer rebates to all participants in the program that purchase pre-**  
 8 **scription drugs directly or indirectly for medical assistance recipients.**

9 ~~[(10)]~~ **(11)** Notwithstanding subsection ~~[(4)(e)]~~ **(4)(d)** of this section, individuals who are eligible  
 10 for Medicare Part D prescription drug coverage may participate in the program.

11 ~~[(11)]~~ **(12)** The program may contract with vendors as necessary to utilize discount purchasing  
 12 programs, including but not limited to group purchasing organizations established to meet the cri-  
 13 teria of the Nonprofit Institutions Act, 15 U.S.C. 13c, or that are exempt under the Robinson-Patman  
 14 Act, 15 U.S.C. 13.

15 **SECTION 2.** **(1)** The Oregon Health Authority shall apply to the Centers for Medicare and  
 16 Medicaid Services for any approval necessary to obtain federal financial participation in the  
 17 costs of drugs purchased directly or indirectly through the Oregon Prescription Drug Pro-  
 18 gram.

19 **(2)** The amendments to ORS 414.312 by section 1 of this 2012 Act become operative upon  
 20 receipt by the authority of federal approval under subsection (1) of this section or, if no  
 21 federal approval is required, on January 1, 2013.

22 **(3)** The authority shall notify the Legislative Counsel upon receipt of federal approval or  
 23 denial of federal approval under subsection (1) of this section or, if the authority determines  
 24 that no federal approval is required, at the time the authority makes that determination.

25 **(4)** The administrator of the Oregon Prescription Drug Program and any state agency  
 26 that will participate in the program may take any actions before the operative date specified  
 27 in subsection (2) of this section that are necessary to implement the amendments to ORS  
 28 414.312 by section 1 of this 2012 Act on the operative date specified in subsection (2) of this  
 29 section.

30 **SECTION 3.** This 2012 Act being necessary for the immediate preservation of the public  
 31 peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect  
 32 on its passage.

33

SB 1577-2  
(LC 219)  
2/3/12 (LHF/ps)

**PROPOSED AMENDMENTS TO  
SENATE BILL 1577**

1 On page 1 of the printed bill, line 2, delete “declaring an” and delete line  
2 3 and insert “prescribing an effective date.”.

3 On page 3, delete lines 30 through 32 and insert:

4 **SECTION 3. This 2012 Act takes effect on July 1, 2012.”.**

5

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<input checked="" type="checkbox"/> No fiscal impact	Preparer Name/Title	Mary May
<input type="checkbox"/> Minimal impact	Preparer Phone #	503-945-6329
<input checked="" type="checkbox"/> Indeterminate	Date Submitted	2/2/2012

**Effect on Expenditure (by Fund and Category):**

	General Fund	Lottery Funds	Other Funds	Federal Funds	TOTAL FUNDS
<b>2011-13 Biennium</b>					
Personal Services	\$ -	\$ -	\$ -	\$ -	\$ -
Services and Supplies	\$ -	\$ -	\$ -	\$ -	\$ -
Special Payments	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Outlay	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Construction	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

	General Fund	Lottery Funds	Other Funds	Federal Funds	TOTAL FUNDS
<b>2013-15 Biennium</b>					
Personal Services	\$ -	\$ -	\$ -	\$ -	\$ -
Services and Supplies	\$ -	\$ -	\$ -	\$ -	\$ -
Special Payments	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Outlay	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Construction	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

**Effect on Revenues (by Fund):**

	General Fund	Lottery Funds	Other Funds	Federal Funds	TOTAL FUNDS
<b>2011-13 Biennium</b>	\$ -	\$ -	\$ -	\$ -	\$ -
<b>2013-15 Biennium</b>	\$ -	\$ -	\$ -	\$ -	\$ -

**Effect on Position(s) / FTE(s):**

Months of Impact	2011-13				2013-15			
	2011-13	2013-15	Position Count	FTE	Position Count	FTE	Position Count	FTE
	16	24	0	0.00	0	0.00	0	0.00

Please complete detail Personal Services information using the DHS-OHA Position Pricing Model

**Written Analysis:**  
**SB 1577-1:** Section 1. (5) (page 2 replaces lines 24-25) with "The Oregon Health Authority may not participate in the program to purchase prescription drugs directly or indirectly for recipients of medical assistance." This prohibits Medical Assistance Programs (MAP) from participating in the Oregon Prescription Drug Program. There is no change to the fiscal impact based on this amendment.

**SB 1577 Introduced:** A similar bill was previously introduced in 2011 - SB 962

SB 1577 amends ORS 414.312 by requiring that state agencies that purchase drugs participate in the Oregon Prescription Drug Program (OPDP). The state agency that receives federal Medicaid funds for the states medical assistance program may not participate in the program.

SB 1577 requires that state agencies that directly or indirectly purchase prescription drugs, including agencies that dispense drugs directly to persons in state-operated facilities, participate in the Oregon Prescription Drug Program (OPDP). The bill states that an agency can only be exempt from this participation requirement if the agency can demonstrate that the availability of federal programs or the agency's other purchasing arrangements will result in greater discounts and aggregate cost savings than would be realized through participation in OPDP. A state agency that contracts with an HMO to provide coverage that includes prescription drugs may not require the HMO to participate in OPDP

**OPDP:** Section (6)(b) requires state agencies to participate in the OPDP unless they can demonstrate greater discounts and aggregate cost savings from other sources. Since no agency will join the OPDP unless net savings are determined, then the impact of this bill would be to reduce costs for state agencies that move to the OPDP.

There is no Federal participation in this program.

OPDP is currently involved with multiple agency cost benefit analyses to determine whether agencies should join the OPDP. There is no additional financial impact to OPDP based on this bill.

**PEBB:** Fiscal impact is indeterminate. Further analysis is required to determine if OPDP would represent an opportunity for savings when compared to PEBB's current arrangement for providing prescription drug benefits. A detailed analysis comparing OPDP to PEBB's current program will be undertaken if this bill is passed.

**OEBB:** SB 1577 has no programmatic or financial impact on OEBB. OEBB currently participates in the Oregon Prescription Drug Program (OPDP) through ODS Companies to provide prescription drugs for seven of the medical plans offered to members, which cover nearly 78 percent of OEBB's members. The remaining medical plans are administered by Providence Health Plans and Kaiser Permanente Northwest. Providence purchases prescription drugs for the medical plans they administer through separate purchasing arrangements because they are able to obtain greater discounts and cost savings. Kaiser Permanente Northwest is a Health Maintenance Organization and is not required to participate in OPDP.

2011-13 Number of Months of Impact:  16 mos.  6 mos.  Other (list number & justification)

Interim Joint Committee on Ways and Means: The budgetary impact of this bill was reviewed and approved by the Interim Joint Committee on Ways and Means to be recommended to be included in the omnibus budget bill.

Yes

If yes, what date(s) and Item Number(s)?

No

Does the proposal have a fiscal or revenue mandate effect on cities, counties, or special districts that triggers evaluation under section 15, Article XI of the Oregon Constitution?

Yes

No

Does the legislative proposal have a fiscal or revenue impact on a program or business area already listed on the November 2011 10.5% Reduction Option list that went forward to the legislature?

No

Yes, Describe in Written Analysis above

**2012 Legislative Session  
Agency Fiscal Impact Statement (FIS) Form**

AGENCY NAME DEPARTMENT OF CORRECTIONS

Measure Number-Version SB 1577-1

No Fiscal Impact	Preparer Name/Title: <u>James Brand / Senior Fiscal Analyst</u>
Minimal Impact	Preparer Phone # <u>Office: 503-945-0996</u> <u>Martha McDaniel: 503-945-0998</u> <u>James home: 503-743-2788</u>
<input checked="" type="checkbox"/> Fiscal Impact	Date Submitted: <u>February 3, 2012</u>

**Effect on Expenditure (by Fund and Category):**

	<u>General Fund</u>	<u>Lottery Funds</u>	<u>Other Funds</u>	<u>Federal Funds</u>	<u>NL Other Funds</u>	<u>NL Federal Funds</u>	<u>TOTAL FUNDS</u>
<b>2011-13 Biennium</b>							
Personal Services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Services and Supplies	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Special Payments	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Outlay	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Construction	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Debt Service	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

	<u>General Fund</u>	<u>Lottery Funds</u>	<u>Other Funds</u>	<u>Federal Funds</u>	<u>NL Other Funds</u>	<u>NL Federal Funds</u>	<u>TOTAL FUNDS</u>
<b>2013-15 Biennium</b>							
Personal Services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Services and Supplies	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Special Payments	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Outlay	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Construction	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Debt Service	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

**Effect on Revenues (by Fund):**

	<u>General Fund</u>	<u>Lottery Funds</u>	<u>Other Funds</u>	<u>Federal Funds</u>	<u>NL Other Funds</u>	<u>NL Federal Funds</u>	<u>TOTAL FUNDS</u>
<b>2011-13 Biennium</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>2013-15 Biennium</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

**Effect on Position(s) / FTE(s):**

<u>Months of Impact</u>		<u>2011-13</u>	<u>2011-13</u>	<u>2013-15</u>	<u>2013-15</u>
<u>2011-13</u>	<u>2013-15</u>	<u>Position Count</u>	<u>FTE</u>	<u>Position Count</u>	<u>FTE</u>
16	24	0	0.00	0	0.00

Please complete detail Personal Services information using "PS Calculation" tab.

- Does the proposed legislation impact a program that is part of the November 2011 required reduction option list?  
If yes, please describe this impact in the Written Analysis section. \_\_\_ Yes      X No
- The budgetary impact of this bill was reviewed and approved by the Interim Joint Committee on Ways and Means to be recommended to be included in the omnibus budget bill. \_\_\_ Yes      ? No
- Is the bill anticipated by the Governor's Recommended Budget as a Policy Option Package?  
If yes, please identify the Policy Option Package name and number in your written analysis. \_\_\_ Yes      X No
- Does the proposal have a fiscal or revenue mandate effect on cities, counties, or special districts that triggers evaluation under section 15, Article XI of the Oregon Constitution? X Yes      \_\_\_ No

SB 1577-1 requires state agencies to participate in the Oregon Prescription Drug Program (OPDP) subject to exceptions.

To purchase the medications required to meet inmate patient needs, the Department of Corrections (DOC) is a participant in the Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP). MMCAP is a free voluntary group purchasing organization of governmental healthcare delivery entities coordinated by the State of Minnesota. The goal of MMCAP is to provide member organizations (including 46 states and the cities of Los Angeles and Chicago) the combined purchasing power to receive the best prices available for pharmaceuticals, hospital supplies, and related products. MMCAP discounts are based on the total purchases of all of a particular state's participants. Within the State of Oregon, DOC and several Oregon county and municipal governments participate.

As directed by the 2011 Legislature, DOC is currently engaged in a 90 day week by week comparison of drug costs between OPDP's Group Purchasing Organization (GPO), Premier, and MMCAP. The comparison should be completed by the end of April 2012, with subsequent analysis to occur immediately following.

The purpose of the comparison is to ensure that DOC is getting the best pricing for drug purchases regardless of which GPO DOC utilizes. If DOC was to join ODPD, it should not experience an increased rate of expenditures for drugs, other than any cost associated with new treatment therapies and general inflation of prescription drugs. For these reasons, DOC does not believe the passage of this bill will require any additional resources for DOC. However, it may lead to additional General Fund savings but this cannot be determined until the current price comparison has been completed and analyzed. Therefore DOC has labeled this bill to be an Indeterminate Fiscal. Keeping drug costs as low as possible is in the best interest of DOC.

Withdrawal of DOC participation in MMCAP would significantly reduce the "Oregon Purchase" and would negatively impact the pricing available to the remaining Oregon members of MMCAP.

**2012 Legislative Session**  
**AGENCY FISCAL IMPACT STATEMENT FORM**  
*(See instructions for completing form)*

*Please complete this form, and return one copy each to the Legislative Fiscal Office (LFO) and the Budget and Management Division (BAM).*

Agency Name: Oregon Youth Authority  
Preparer John Paul Jones  
Name/Title: \_\_\_\_\_  
Preparer Phone #: 503.373.7423  
Date Submitted: 1/31/2012

Measure #: SB 1577 Version: \_\_\_\_\_

- No fiscal impact**    The absence of an expenditure or revenue (non-tax) impact.  
 **Minimal Impact**    A fiscal impact that can be absorbed with existing agency resources.  
 **Fiscal Impact**      A fiscal impact determined to be greater than a minimal fiscal impact.

Does the proposed legislation impact a program that is part of the November 2011 required reduction option list? *If yes, please describe this impact in the Written Analysis section of the form.*

Yes \_\_\_\_\_ No X

The budgetary impact of this bill was reviewed and approved by the Interim Joint Committee on Ways and Means to be recommended to be included in the omnibus budget bill.

Yes \_\_\_\_\_ No X

Is the bill anticipated by the Governor's Recommended Budget as a Policy Option Package? If yes, please identify the Policy Option Package name and number in your written analysis.

Yes \_\_\_\_\_ No X

Does the proposal have a fiscal or revenue mandate effect on cities, counties, or special districts that triggers evaluation under Section 15, Article XI of the Oregon Constitution?

Yes X No \_\_\_\_\_

**AGENCY WRITTEN ANALYSIS:**

*Provide a high-level summary of the general requirements of the bill and what your agency will need to do to comply with the requirements. Identify any ambiguity or other issues related to the measure's language. Identify measure's effective date, and if applicable, operative dates. Summarize the methodology used to make fiscal calculations/determination. See instructions for other considerations.*

Bill requires state agencies to participate in the Oregon Prescription Drug Program (OPDP) subject to exceptions.

OYA currently has a contract with a private vendor to provide medications services. We are moving to the DOC MMCAP (a coalition of roughly 46 states and local governments combining purchasing power) drug program which we believe will save the agency an undetermined amount of money.

To determine the cost or potential cost savings we will need specific medication cost from OPDP. We understand that DOC is conducting study to compare drug costs between OPDP and MMCAP which should be completed in the spring of 2012. Once that study is completed OYA will be able to determine the fiscal impact to the agency.

**AGENCY QUANTITATIVE ANALYSIS**

Provide a detail description of the proposed legislation's effect on expenditures, revenues, and full time equivalent (FTE) positions. The table below is an embedded Excel worksheet. To fill out the form, place your mouse on the table; right click; select Worksheet Object and Open. If your analysis is number intensive, you may want to use just the Excel version of this template.

**Effect on Expenditure (by Fund and Category):**

	<u>General Fund</u>	<u>Lottery Funds</u>	<u>Other Funds</u>	<u>Federal Funds</u>	<u>NL Other Funds</u>	<u>NL Federal Funds</u>	<u>TOTAL FUNDS</u>
<b>2011-13 Biennium</b>							
Personal Services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Services and Supplies	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Special Payments	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Outlay	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Construction	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Debt Service	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

	<u>General Fund</u>	<u>Lottery Funds</u>	<u>Other Funds</u>	<u>Federal Funds</u>	<u>NL Other Funds</u>	<u>NL Federal Funds</u>	<u>TOTAL FUNDS</u>
<b>2013-15 Biennium</b>							
Personal Services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Services and Supplies	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Special Payments	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Outlay	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Capital Construction	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Debt Service	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

**Effect on Revenues (by Fund):**

	<u>General Fund</u>	<u>Lottery Funds</u>	<u>Other Funds</u>	<u>Federal Funds</u>	<u>NL Other Funds</u>	<u>NL Federal Funds</u>	<u>TOTAL FUNDS</u>
<b>2011-13 Biennium</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>2013-15 Biennium</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

**Effect on Position(s) / FTE(s):**

<u>Months of Impact</u>		<u>2011-13</u>	<u>2011-13</u>	<u>2013-15</u>	<u>2013-15</u>
<u>2011-13</u>	<u>2013-15</u>	<u>Position Count</u>	<u>FTE</u>	<u>Position Count</u>	<u>FTE</u>



## FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: SB 1577 - 2

Seventy-Sixth Oregon Legislative Assembly – 2012 Regular Session

Legislative Fiscal Office

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Prepared by: Kim To  
Reviewed by: Linda Ames, Doug Wilson, Laurie Byerly  
Date: 2/6/2012

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### Measure Description:

Requires state agencies to participate in Oregon Prescription Drug Program subject to exceptions.

### Government Unit(s) Affected:

Oregon Health Authority (OHA), Department of Corrections (DOC), Oregon Youth Authority (OYA), counties, cities

### Summary of Fiscal Impact:

See Analysis

### Local Government Mandate:

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

### Analysis:

Senate Bill 1577 with the – 2 Amendment requires state agencies to participate in the Oregon Prescription Drug Program (OPDP) subject to certain exceptions. The bill authorizes the administrator of OPDP to negotiate with prescription drug manufacturers on the extension of drug manufacturer rebates to all participants in the program that purchase prescription drugs directly or indirectly for medical assistance recipients. The measure directs the Oregon Health Authority (OHA) to apply to the Centers for Medicare and Medicaid Services for any approval necessary to obtain federal financial participation in the costs of drug purchased through OPDP. The bill is operative upon receipt by OHA of federal approval. If no federal approval is required, the bill is operative on January 1, 2013. OHA and any state agency that will participate in the program may take action before the specified operative dates. The – 2 Amendment removes the emergency clause, and establishes July 1, 2012 as the effective date. The – 2 Amendment does not change the original indeterminate fiscal.

The bill requires state agencies that directly or indirectly purchase prescription drugs, including agencies that dispense prescription drugs directly to persons in state-operated facilities, to participate in OPDP. State agencies exempted from this requirement include:

1. Agencies that can demonstrate to the administrator that the availability of federal programs or the agency's other purchasing arrangements will result in greater discounts and aggregate cost savings than would be realized through OPDP.
2. Agencies that contract with a health maintenance organization to provide coverage that includes prescription drugs.

The bill stipulates that state agencies that receives federal Medicaid funds, and are responsible for implementing that state's medical assistance program, may not participate in the program.

At this time, the full fiscal impact of this bill is indeterminate depending on the purchasing power and competitiveness of OPDP.

### Oregon Health Authority (OHA)

Passage of SB 1577 with the – 2 Amendment is anticipated to have no fiscal impact on the Oregon Educators Benefit Board (OEBB). OHA reports that OEBB currently participates in OPDP through ODS

companies to provide prescription drugs for seven of the medical plans offered to members. The remaining medical plans are administered by Providence Health Plans and Kaiser Permanente Northwest. Providence purchases prescription drugs for the medical plans they administer through separate purchasing arrangements because they are able to obtain greater discounts and cost savings. Kaiser Permanente Northwest is a Health Maintenance Organization and is not required to participate in OPDP.

The fiscal impact of SB 1577 with the – 2 Amendment on the Public Employee's Benefit Board (PEBB) is indeterminate. OHA reports that further analysis is required to determine if OPDP would represent an opportunity for savings when compared to PEBB's current arrangement for providing prescription drug benefits.

Department of Corrections (DOC), Oregon Youth Authority (OYA)

The two state agencies that are the largest purchasers of prescription drugs are the Department of Corrections and the Oregon Youth Authority. Currently, the Department of Corrections (DOC) purchases medications required to meet inmate needs through the Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP) which has members in over 30 states. MMCAP discounts are based on the total purchases of all of a particular state's participants. Within the state of Oregon, DOC and several Oregon county and municipal governments participate. Withdrawal of DOC participation would reduce the "Oregon Purchase" and would likely negatively impact the pricing available to the other Oregon participants. In addition, DOC is currently working with the Oregon Youth Authority (OYA) to develop an interagency agreement that enables DOC to provide pharmacy services and supplies to OYA

SB 1577 with the – 2 Amendment exempts any agency that can demonstrate that its purchasing arrangements will result in greater discounts and aggregate cost savings than would be realized through OPDP. As directed by the 2011 Legislature, DOC is working on a comparison of drug costs between OPDP's Group Purchasing Organization, Premier, and MMCAP. This comparison and analysis should be completed by May 2012.

In summary, although currently state agencies are working with OHA to participate in OPDP, at this time, the potential cost savings, if any, that can be realized by DOC, OYA and other state agencies by contracting with OPDP cannot be quantified.

Example 7:

# Budget Report

## Senate Bill 1547

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Business, Transportation and Economic Development)

### 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.

Allows Director of Department of Consumer and Business Services to authorize captive insurers in this state. Sets standards for captive insurers regarding formation, licensing, classes of insurance transacted and reporting. Exempts certain captive insurer documents from disclosure as public records. Sets tax treatment for captive insurers.

Becomes operative on July 1, 2012.

Declares emergency, effective on passage.

### A BILL FOR AN ACT

1  
2 Relating to captive insurance; and declaring an emergency.

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

### GENERAL REQUIREMENTS FOR CAPTIVE INSURERS

4  
5  
6  
7 **SECTION 1.** Sections 2 to 22 of this 2012 Act are added to and made a part of the In-  
8 surance Code.

9 **SECTION 2.** As used in sections 2 to 22 of this 2012 Act:

10 (1)(a) "Affiliate" means a business entity that, because of common ownership and con-  
11 trol, is in the same corporate system as a parent or a member organization.

12 (b) For purposes of this subsection, "common ownership and control" means that two  
13 or more business entities are owned or controlled by the same person or group of persons  
14 with:

15 (A) Direct or indirect ownership of 80 percent or more of the outstanding voting stock  
16 of the stock corporation for a captive insurer that is a stock corporation;

17 (B) Direct or indirect ownership of 80 percent or more of the surplus and the voting  
18 power of the mutual corporation for a captive insurer that is a mutual corporation; or

19 (C) Direct or indirect ownership by the same member or members of 80 percent or more  
20 of the membership interests in the limited liability company for a captive insurer that is a  
21 limited liability company.

22 (2) "Alien captive insurer" means an insurer:

23 (a) Formed to transact insurance for a parent or affiliate of the insurer; and

24 (b) Licensed under the laws of a nation other than the United States that imposes stat-  
25 utory or regulatory standards:

26 (A) On a business entity transacting insurance in the other nation; and

27 (B) In a form acceptable to the Director of the Department of Consumer and Business  
28 Services.

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 (3) "Association" means a legal association of two or more persons that has been in  
2 continuous existence for at least one year if the association or its member organizations:

3 (a) Own, control, or hold with power to vote, all of the outstanding voting securities of  
4 an association captive insurer incorporated as a stock insurer;

5 (b) Have complete voting control over an association captive insurer incorporated as a  
6 mutual insurer; or

7 (c) Have complete voting control over an association captive insurer formed as a limited  
8 liability company.

9 (4) "Association captive insurer" means a business entity that insures the risks of:

10 (a) A member organization of the association;

11 (b) An affiliate of a member organization of the association; or

12 (c) The association.

13 (5) "Branch captive insurer" means an alien captive insurer that holds a certificate of  
14 authority from the Director of the Department of Consumer and Business Services to  
15 transact insurance in this state through a business division with a principal place of business  
16 in this state.

17 (6) "Branch operation" means a business operation of a branch captive insurer in this  
18 state.

19 (7) "Captive insurer" means any of the following that is formed or holds a certificate of  
20 authority issued under sections 2 to 22 of this 2012 Act:

21 (a) A pure captive insurer;

22 (b) A branch captive insurer;

23 (c) An association captive insurer; or

24 (d) A captive reinsurer;

25 (8) "Captive reinsurer" means a reinsurer that is:

26 (a) Formed or holds a certificate of authority under sections 2 to 22 of this 2012 Act;

27 (b) Wholly owned by a qualifying reinsurer parent company; and

28 (c) A stock corporation.

29 (9) "Controlled unaffiliated business" means a business entity:

30 (a) That is not in the same corporate system as a parent or the parent's affiliate but has  
31 a contractual relationship with a parent or affiliate; and

32 (b) Whose risks are managed by a pure captive insurer in accordance with rules adopted  
33 by the Director of the Department of Consumer and Business Services under section 4 of this  
34 2012 Act.

35 (10) "Foreign captive insurer" means an insurer:

36 (a) Formed to transact insurance for a parent or affiliate of the insurer; and

37 (b) Licensed under the laws of another state that imposes statutory or regulatory stan-  
38 dards:

39 (A) On a business entity transacting insurance in the other state or jurisdiction; and

40 (B) In a form acceptable to the Director of the Department of Consumer and Business  
41 Services.

42 (11) "Member organization" means a person that belongs to an association.

43 (12) "Parent" means a person that directly or indirectly owns, controls, or holds with  
44 power to vote, more than 50 percent of:

45 (a) The outstanding voting securities of a pure captive insurer; or

1 (b) The pure captive insurer, if the pure captive insurer is formed as a limited liability  
2 company.

3 (13) "Pure captive insurer" means a business entity that insures risks of a parent or af-  
4 filiate of the business entity.

5 (14)(a) "Qualifying reinsurer parent company" means an accredited reinsurer in this  
6 state that has:

7 (A) A consolidated GAAP net worth of not less than \$500 million; and

8 (B) Complies with the consolidated debt to total capital ratio established by rule by the  
9 Director of the Department of Consumer and Business Services.

10 (b) For purposes of this subsection "consolidated GAAP net worth" means the consol-  
11 idated shareholders' equity determined in accordance with generally accepted accounting  
12 principles for reporting to the United States Securities and Exchange Commission.

13 SECTION 3. (1) The provisions of the Insurance Code cited in sections 2 to 22 of this 2012  
14 Act apply to captive insurers. In addition, the provisions of the Insurance Code set forth in  
15 ORS chapter 731 relating to administration of the insurance laws apply to captive insurers  
16 to the extent not inconsistent with the express provisions of sections 2 to 22 of this 2012 Act.

17 (2) In addition to the provisions of the Insurance Code set forth in subsection (1) of this  
18 section, ORS 705.137 and 705.139 apply to captive insurers.

19 SECTION 4. The Director of the Department of Consumer and Business Services may  
20 adopt rules for the administration of sections 2 to 22 of this 2012 Act.

21 SECTION 5. All documents, materials and other information in the possession of the  
22 Department of Consumer and Business Services under sections 2 to 22 of this 2012 Act are  
23 confidential and subject to public disclosure only as provided in ORS 705.137.

24 SECTION 6. (1)(a) When permitted by its articles of incorporation or its charter and by-  
25 laws, a captive insurer may apply to the Director of the Department of Consumer and Busi-  
26 ness Services for a certificate of authority to transact any class of insurance.

27 (b) Notwithstanding paragraph (a) of this subsection:

28 (A) A pure captive insurer may not insure a risk other than a risk of its parent or af-  
29 filiate or a controlled unaffiliated business.

30 (B) An association captive insurer may not insure a risk other than a risk of:

31 (i) An affiliate;

32 (ii) A member organization of its association; or

33 (iii) An affiliate of a member organization of its association.

34 (C) A captive insurer may not provide workers' compensation insurance, life insurance,  
35 health insurance or any personal property or personal casualty line of insurance, including  
36 but not limited to personal motor vehicle insurance coverage and homeowner's insurance,  
37 and any component of such coverage.

38 (D) A captive insurer may not accept or cede reinsurance except as provided in section  
39 11 of this 2012 Act.

40 (2) To transact insurance in this state, a captive insurer must:

41 (a) Obtain from the director a certificate of authority that authorizes the captive insurer  
42 to transact insurance in this state;

43 (b) Appoint a resident registered agent to accept service of process and to otherwise act  
44 on behalf of the captive insurer in this state; and

45 (c)(A) Hold at least once each year in this state a board of directors meeting; or

1 (B) Maintain in this state:

2 (i) The principal place of business of the captive insurer; or

3 (ii) In the case of a branch captive insurer, the principal place of business for the branch  
4 operations of the branch captive insurer.

5 (3) In the case of a captive insurer formed as a corporation, if the registered agent cannot  
6 be found with reasonable diligence at the registered office of the captive insurer, the  
7 director is the agent of the captive insurer upon whom process, notice or demand may be  
8 served.

9 (4)(a) An applicant captive insurer formed as a corporation shall file with the director:

10 (A) Certified copies of the articles of incorporation or the charter and bylaws of the  
11 corporation;

12 (B) A statement under oath of the president and secretary of the corporation showing  
13 the financial condition of the corporation; and

14 (C) Any other statement or document required by the director as adopted by rule.

15 (b) In addition to the other information required by this subsection, an applicant captive  
16 insurer shall file with the director evidence of:

17 (A) The amount and liquidity of the assets of the applicant captive insurer relative to the  
18 risks to be assumed by the applicant captive insurer;

19 (B) The adequacy of the expertise, experience and character of the individual who will  
20 manage the applicant captive insurer;

21 (C) The overall soundness of the plan of operation of the applicant captive insurer;

22 (D) The adequacy of the loss prevention programs for any parent or member organization  
23 of the applicant captive insurer; and

24 (E) Any other factor the director adopts by rule and considers relevant in ascertaining  
25 whether the applicant captive insurer is able to meet the policy obligations of the applicant  
26 captive insurer.

27 (5)(a) A captive insurer shall pay to the department nonrefundable fees established by the  
28 director by rule for:

29 (A) Examining, investigating and processing the captive insurer's application for issuance  
30 of a certificate of authority;

31 (B) Obtaining a certificate of authority for the year the director issues a certificate of  
32 authority to the captive insurer in an amount not less than \$5,000; and

33 (C) Renewing a certificate of authority in an amount not less than \$5,000.

34 (b) The fees a captive insurer pays to the Department of Consumer and Business Services  
35 for obtaining or renewing a certificate of authority are in lieu of any payment of premium  
36 assessment on receipt of premium by the captive insurer. Fees for obtaining or renewing a  
37 certificate of authority may be increased by the department by rule and may be scaled on  
38 the basis of premiums the captive insurer collects in any given year.

39 (c) The director may retain legal, financial and examination services from outside the  
40 department to perform any functions described in sections 2 to 22 of this 2012 Act and may  
41 charge the applicant captive insurer the reasonable cost of services performed.

42 (6) If the director is satisfied that the documents and statements filed by the applicant  
43 captive insurer meet the requirements of sections 2 to 22 of this 2012 Act, the director may  
44 issue a certificate of authority that authorizes the captive insurer to transact insurance in  
45 this state.

1 (7) A certificate of authority issued under this section expires annually and must be re-  
 2 newed by December 31 of each year beginning with the year following the year that the ori-  
 3 ginal certificate was issued.

4 (8) Upon approval of the director, a foreign or alien captive insurer may become a do-  
 5 mestic captive insurer by complying with all of the requirements of the Insurance Code re-  
 6 lative to the organization and licensing of a domestic captive insurer of the same or  
 7 equivalent type in this state and by filing with the director certified copies of the insurer's  
 8 articles of association, charter or other organizational document, together with any appro-  
 9 priate amendments adopted in accordance with the laws of this state bringing those articles  
 10 of association, charter or other organizational document into compliance with the laws of  
 11 this state. After complying with these requirements, the captive insurer is entitled to the  
 12 necessary or appropriate certificates and licenses to continue transacting insurance in this  
 13 state and is subject to the authority and jurisdiction of this state. In connection with this  
 14 redomestication, the director may waive any requirements for public hearings. It is not  
 15 necessary for a captive insurer redomesticating into this state to merge, consolidate, trans-  
 16 fer assets or otherwise engage in any other reorganization, other than as specified in this  
 17 section.

18 **SECTION 7.** A captive insurer may assume a business name only if consistent with the  
 19 provisions of ORS 731.430.

20 **SECTION 8.** (1) To qualify for authority to transact insurance in this state, a captive  
 21 insurer shall possess and thereafter maintain capital or surplus, or any combination thereof,  
 22 of not less than:

23 (a) \$250,000 for a pure captive insurer.

24 (b) \$750,000 for an association captive insurer incorporated as a stock insurer or as a  
 25 mutual insurer.

26 (c) \$300,000,000 for a captive reinsurer.

27 (2) In accordance with ORS 731.554 (6), for the protection of the public, the Director of  
 28 the Department of Consumer and Business Services may require a captive insurer to possess  
 29 and maintain capital or surplus, or any combination thereof, in excess of the amount other-  
 30 wise required under this section.

31 (3) The capital and surplus required under subsections (1) and (2) of this section may be  
 32 in the form of:

33 (a) Cash or cash equivalent; or

34 (b) An irrevocable letter of credit issued by an insured institution, as described in ORS  
 35 731.510, and approved by the director.

36 (4)(a) Except as provided in paragraph (d) of this subsection, a branch captive insurer,  
 37 as security for the payment of liabilities attributable to branch operations, must establish  
 38 and maintain, through its branch operations, a trust fund funded by an irrevocable letter of  
 39 credit or other asset approved by the director.

40 (b) The trust fund established under this subsection shall be for the benefit of United  
 41 States policyholders and United States ceding insurers under insurance policies issued or  
 42 reinsurance contracts issued or assumed.

43 (c) The amount of the security required under this subsection must be equal to or  
 44 greater than:

45 (A) The capital and surplus required under this section applicable to the line of business



1 written by the captive insurer; and

2 (B) The net reserves on the insurance policies or reinsurance contracts described in this  
3 subsection, including:

4 (i) Case basis loss and allocated loss adjustment expense reserves;

5 (ii) Losses and allocated loss adjustment expense amounts incurred but not reported; and

6 (iii) Unearned premiums with regard to insurance transacted by branch operations.

7 (d) In accordance with ORS 731.510, the director may permit a branch captive insurer  
8 that is required to post security for loss reserves on insurance transacted by its reinsurer  
9 to reduce the funds in the trust fund established under this section by the same amount as  
10 the security posted if the security remains posted with the reinsurer.

11 (5) A captive insurer may pay dividends or make distributions if all the following re-  
12 quirements are met:

13 (a) Submission of a report to the director listing all dividends and distributions within  
14 five business days following the declaration, and not less than 10 business days prior to  
15 payment, of the dividends and distributions, commencing from the date of receipt of the re-  
16 port by the director.

17 (b) The report required under paragraph (a) of this subsection must demonstrate that the  
18 combined capital and surplus of the captive insurer following any dividend or distribution is  
19 reasonable in relation to the captive insurer's outstanding liabilities and adequate to the  
20 captive insurer's financial needs.

21 (c) A captive insurer may pay dividends or distributions only from earned surplus unless  
22 the director gives prior approval for payment from another source.

23 **SECTION 9.** (1) A pure captive insurer must be incorporated as a stock insurer with the  
24 capital of the pure captive insurer divided into shares and held by the shareholders of the  
25 pure captive insurer.

26 (2) An association captive insurer may be:

27 (a) Incorporated as a stock insurer with the capital of the association captive insurer  
28 divided into shares and held by the shareholders of the association captive insurer; or

29 (b) Incorporated as a mutual insurer without capital stock, with a governing body elected  
30 by the member organizations of the association captive insurer.

31 (3) The requirements of ORS 732.085 apply to the incorporators of a captive insurer.

32 (4) Any person desiring to organize a captive insurer must first file an application with  
33 the Director of the Department of Consumer and Business Services for a permit to organize  
34 the captive insurer. The applicant shall pay the applicable fee to the director at the time the  
35 application is filed. The application shall be on forms provided by the director and shall be  
36 signed by the applicants and verified. The form shall specify information about the following:

37 (a) The character, reputation, financial responsibility and purposes of the proposed  
38 incorporators;

39 (b) The character, reputation, financial responsibility, insurance experience and business  
40 qualifications of the proposed officers and directors and the proposed managers;

41 (c) Any information provided to the Department of Consumer and Business Services in  
42 the application for a certificate of authority or that is maintained in the department's files;  
43 and

44 (d) Other aspects the director considers advisable.

45 (5) The director shall approve an application for a permit to organize a captive insurer

1 only if the director finds that:

2 (a) The application is complete;

3 (b) The documents filed with the application are in the proper form;

4 (c) The proposed financial structure is adequate;

5 (d) The character, reputation, financial responsibility and general fitness of the persons  
6 named in the application or otherwise found to be associated with or have an interest in the  
7 proposed insurer are such as to command the confidence of the public;

8 (e) The proposed directors are collectively competent to assume responsibility for the  
9 management and general policies and procedures of the captive insurer;

10 (f) The proposed management, collectively, possess the requisite general business ability  
11 and experience in the business of insurance of the class or classes specified in the applica-  
12 tion; and

13 (g) No fact is then known to the director that would prevent the proposed insurer from  
14 completing its organization and receiving a certificate of authority to transact insurance as  
15 a captive insurer.

16 (6) To the extent not otherwise inconsistent with provision of sections 2 to 22 of this 2012  
17 Act, ORS 732.095, 732.105 and 732.115 apply for the filing of the articles of incorporation of a  
18 captive insurer.

19 (7)(a) An alien captive insurer applying to the director for a certificate of authority to  
20 act as a branch captive insurer shall obtain from the director a certificate finding that:

21 (A) The nation of an alien captive insurer imposes statutory or regulatory standards, in  
22 a form acceptable to the director, on captive insurers transacting insurance in that nation;  
23 and

24 (B) After considering the character, reputation, financial responsibility, insurance expe-  
25 rience and business qualifications of the officers and directors of the alien captive insurer,  
26 and other relevant information, the establishment and maintenance of the branch operations  
27 will promote the general good of this state.

28 (b) After the director issues a certificate under paragraph (a) of this subsection, the alien  
29 captive insurer may register to do business in this state as a branch captive insurer.

30 (8) The capital stock of a captive insurer incorporated as a stock insurer may not be is-  
31 sued at less than par value.

32 (9) At least one-quarter of the members of the board of directors of a captive insurer  
33 formed as a corporation shall be residents of this state.

34 (10)(a) A captive insurer formed as a corporation under sections 2 to 22 of this 2012 Act  
35 has the privileges of and is subject to ORS chapters 60 and 732 and sections 2 to 22 of this  
36 2012 Act.

37 (b) If a conflict exists between a provision of ORS chapters 60 and 732 and a provision  
38 of sections 2 to 22 of this 2012 Act, sections 2 to 22 of this 2012 Act shall control.

39 (c) Except as provided in paragraph (d) of this subsection, the provisions of sections 2 to  
40 22 of this 2012 Act pertaining to a merger, consolidation, conversion, mutualization and  
41 redomestication apply in determining the procedures to be followed by a captive insurer in  
42 carrying out any of the transactions described in those provisions.

43 (d) The director may waive or modify the requirements in paragraph (c) of this sub-  
44 section after providing notice and a public hearing.

45 (11) The articles of incorporation or bylaws of a captive insurer may not authorize a

1 quorum of a board of directors to consist of less than one-third of the fixed or prescribed  
2 number of directors as provided in rules adopted by the director.

3 **SECTION 10.** (1)(a) An association captive insurer must comply with the investment re-  
4 quirements of ORS 733.510 to 733.780.

5 (b) Notwithstanding paragraph (a) of this subsection, the Director of the Department of  
6 Consumer and Business Services may by rule approve the use of alternative reliable methods  
7 of valuation and rating for an association captive insurer.

8 (2)(a) A pure captive insurer is not subject to any restrictions on allowable investments  
9 under ORS 733.510 to 733.780.

10 (b) The director may prohibit or limit an investment that threatens the solvency or  
11 liquidity of a pure captive insurer.

12 (3) A captive insurer may not make loans to the parent of the captive insurer or an af-  
13 filiate of the captive insurer.

14 **SECTION 11.** (1) A captive insurer may provide reinsurance on risks ceded by an affiliate  
15 of the insurer or a controlled unaffiliated business.

16 (2) A captive insurer may take credit for reserves on risks or portions of risks ceded to  
17 reinsurers if the credit is acceptable to the Director of the Department of Consumer and  
18 Business Services.

19 (3) Subject to the prior written approval of the director, a captive insurer may participate  
20 in a pool for the purpose of commercial risk sharing. However, a captive insurer may not join  
21 or contribute financially to a plan, pool, association or guaranty or insolvency fund in this  
22 state, and a captive insurer, or its insured or its parent or any affiliated company or any  
23 member organization of its association, may not receive a benefit from a plan, pool, associ-  
24 ation or guaranty or insolvency fund for claims arising out of the operations of the captive  
25 insurer.

26 (4) A captive reinsurer must annually file with the department an actuarial opinion pro-  
27 vided by a qualified actuary on loss and loss adjustment expense reserves. The qualified  
28 actuary providing the actuarial opinion must be independent and may not be an employee  
29 of the captive reinsurer or an affiliate of the captive reinsurer for which the actuarial opin-  
30 ion is filed.

31 (5) A captive reinsurer may discount its loss and loss adjustment expense reserves only  
32 as allowed in rules adopted by the director.

33 (6) The director may disallow the discounting of loss and loss adjustment reserves of a  
34 captive reinsurer if the captive reinsurer violates any provision of sections 2 to 22 of this  
35 2012 Act.

36 **SECTION 12.** A captive insurer is not required to join a rating organization.

37 **SECTION 13.** (1) A captive insurer is not required to make a report except as specified  
38 in this section.

39 (2)(a) Before March 1 of each year, a captive insurer shall submit to the Director of the  
40 Department of Consumer and Business Services a report of the financial condition of the  
41 captive insurer, verified by oath of two of the executive officers of the captive insurer.

42 (b) A captive insurer shall report:

43 (A) Using generally accepted accounting principles, except to the extent that the director  
44 requires, approves or accepts the use of statutory accounting principles;

45 (B) Using a useful or necessary modification or adaptation to an accounting principle

1 that is required, approved or accepted by the director for the type of insurance and kind of  
2 insurer to be reported upon; and

3 (C) Supplemental or additional information required by the director.

4 (c) Except as otherwise provided in sections 2 to 22 of this 2012 Act, an association cap-  
5 tive insurer shall file the financial statement required by ORS 731.574.

6 (d) For the purposes of this subsection, "statutory accounting" means a method of ac-  
7 counting using rules that insurance companies must follow in filing an annual financial  
8 statement with the Department of Consumer and Business Services.

9 (3)(a) A pure captive insurer may make a written request to file the required report on  
10 a fiscal year end that is consistent with the fiscal year of the parent company of the pure  
11 captive insurer.

12 (b) If the director grants an alternative reporting date for a pure captive insurer as de-  
13 scribed under paragraph (a) of this subsection, the annual report is due 60 days after the  
14 fiscal year end.

15 (4)(a) Not later than 60 days after the fiscal year end, an alien captive insurer operating  
16 as a branch captive insurer in this state shall file with the director a copy of all reports and  
17 statements required to be filed under the laws of the jurisdiction in which the alien captive  
18 insurer is formed, verified by oath by two of the alien captive insurer's executive officers.

19 (b) If the director is satisfied that the annual report filed by the alien captive insurer in  
20 the jurisdiction in which the alien captive insurer is formed provides adequate information  
21 concerning the financial condition of the alien captive insurer, the director may waive the  
22 requirement for completion of the annual statement required for a captive insurer under this  
23 section with respect to business written in the alien jurisdiction.

24 (c) A waiver granted by the director under paragraph (b) of this subsection shall be in  
25 writing and is subject to public inspection.

26 (5) All captive insurers transacting insurance in this state shall engage a qualified  
27 actuary with knowledge of this state for purposes of determining and setting premiums to  
28 be charged by the captive insurer.

29 **SECTION 14.** (1)(a) The Director of the Department of Consumer and Business Services  
30 shall examine the affairs of each captive insurer once in each three-year period.

31 (b) The three-year period described in paragraph (a) of this subsection is determined on  
32 the basis of three full annual accounting periods of operation.

33 (c) The examination is to be made as of December 31 of the full three-year period or as  
34 of the last day of the month of an annual accounting period authorized for a captive insurer  
35 under this section.

36 (d) In addition to an examination required under this subsection, the director may ex-  
37 amine a captive insurer whenever the director determines it to be prudent.

38 (2) During an examination under this section, the director shall thoroughly examine the  
39 affairs of the captive insurer to ascertain:

40 (a) The financial condition of the captive insurer;

41 (b) The ability of the captive insurer to fulfill the obligations of the captive insurer; and

42 (c) Whether the captive insurer meets the requirements of sections 2 to 22 of this 2012  
43 Act.

44 (3) The director may expand the three-year period described in subsection (1) of this  
45 section to five years if during that period a captive insurer is subject to a comprehensive

1 **annual audit:**

2 (a) Of a scope satisfactory to the director; and

3 (b) Performed by independent auditors approved by the director.

4 (4) The director may accept a comprehensive annual independent audit in lieu of an ex-  
5 amination if the scope of the examination is satisfactory to the director and the examination  
6 is performed by a qualified independent auditor.

7 (5) A captive insurer that is examined under this section shall pay the expenses and  
8 charges of the examination.

9 **SECTION 15.** Any captive insurer for which the Director of the Department of Consumer  
10 and Business Services issues a certificate of authority must comply with the limits of risk  
11 set forth in ORS 731.504.

12 **SECTION 16.** (1) The Director of the Department of Consumer and Business Services  
13 may suspend or revoke the certificate of authority issued to a captive insurer to transact  
14 insurance in this state if the captive insurer:

15 (a) Is insolvent or impaired as defined in ORS 734.014;

16 (b) Fails to meet the requirements of sections 2 to 22 of this 2012 Act;

17 (c) Refuses or fails to submit an annual report required by section 13 of this 2012 Act or  
18 any other report or statement required by law or by order of the director;

19 (d) Fails to comply with the charter, bylaws or other organizational document of the  
20 captive insurer;

21 (e) Fails to submit to an examination under section 14 or 18 of this 2012 Act or any legal  
22 obligation relative to an examination under section 14 or 18 of this 2012 Act;

23 (f) Refuses or fails to pay the cost of examination under section 14 or 18 of this 2012 Act;

24 (g) Uses methods that, although not otherwise specifically prohibited by law, render:

25 (A) The operation of the captive insurer detrimental to the public or the policyholders  
26 of the captive insurer according to standards adopted by the director by rule; or

27 (B) The condition of the captive insurer unsound with respect to the public or to the  
28 policyholders of the captive insurer; or

29 (h) Otherwise fails to comply with laws of this state.

30 (2) If the director finds, upon examination, hearing or other evidence that a captive  
31 insurer has committed any of the acts specified in subsection (1) of this section, the director  
32 may suspend or revoke the certificate of authority issued to the captive insurer if the di-  
33 rector considers it in the best interest of the public and the policyholders of the captive  
34 insurer.

35  
36 **BRANCH CAPTIVE INSURERS**  
37

38 **SECTION 17.** Except as otherwise provided in sections 2 to 22 of this 2012 Act, a branch  
39 captive insurer must be a pure captive insurer with respect to business operations in this  
40 state, unless otherwise permitted by rule of the Director of the Department of Consumer and  
41 Business Services.

42 **SECTION 18.** (1) The Director of the Department of Consumer and Business Services  
43 shall examine only the branch operations of, and the insurance transacted by, a branch  
44 captive insurer in this state if the branch captive insurer:

45 (a) Provides annually to the director a certificate of compliance, or an equivalent, issued

1 by or filed with the licensing authority of the jurisdiction in which the branch captive insurer  
 2 is formed; and

3 (b) Demonstrates to the satisfaction of the director that the branch captive insurer is  
 4 operating in sound financial condition in accordance with sections 2 to 22 of this 2012 Act  
 5 and all applicable laws and regulations of the jurisdiction in which the branch captive insurer  
 6 is formed.

7 (2) As a condition of its authority as a branch captive insurer, an alien captive insurer  
 8 must authorize the director to examine the affairs of the alien captive insurer in the juris-  
 9 diction in which the alien captive insurer is formed.

10 (3) An alien captive insurer that is examined under this section shall pay the expenses  
 11 and charges of the examination

12  
 13 **FOREIGN CAPTIVE INSURERS**

14  
 15 **SECTION 19.** Notwithstanding ORS 731.022, a foreign captive insurer may provide insur-  
 16 ance in this state if the foreign captive insurer meets both of the following conditions:

17 (1) The foreign captive insurer is domiciled in a state that regulates the foreign captive  
 18 insurer as a captive insurer and the captive insurer is in good standing in that state.

19 (2) All activities related to the placement of the insurance occurs in the domicile state  
 20 and the insurance otherwise complies with the laws of the domicile state, including the pro-  
 21 posal to make an insurance contract, taking or receiving an application for insurance, col-  
 22 lecting a premium or other consideration for the insurance and issuing or delivering policies  
 23 of insurance.

24  
 25 **CAPTIVE REINSURERS**

26  
 27 **SECTION 20.** At least 35 percent of the assets of a captive reinsurer must be managed  
 28 by an asset manager domiciled in this state.

29 **SECTION 21.** If permitted by its articles of incorporation or charter, and in accordance  
 30 with sections 6 and 22 of this 2012 Act, a captive reinsurer may apply to the Director of the  
 31 Department of Consumer and Business Services for a certificate of authority to transact  
 32 reinsurance.

33 **SECTION 22.** (1) A captive reinsurer must be incorporated as a stock insurer with its  
 34 capital divided into shares and held by the captive reinsurer's shareholders. In incorporating,  
 35 a captive reinsurer must comply with the requirements of section 9 of this 2012 Act.

36 (2) The capital stock of a captive reinsurer must be issued at par value or greater.

37 (3) At least one member of the board of directors of a captive reinsurer incorporated in  
 38 this state must be a resident of this state.

39  
 40 **TAX PROVISIONS**

41  
 42 **SECTION 23.** Section 24 of this 2012 Act is added to and made a part of ORS chapter 317.

43 **SECTION 24.** A captive insurer, as defined in section 2 of this 2012 Act, making an  
 44 election under section 831(b) of the Internal Revenue Code, as amended, shall be afforded the  
 45 same tax treatment on receipt of premiums and tax on investment earnings for state income

1 tax purposes as exists for federal income tax purposes except that the income tax rates on  
2 taxable income of the captive insurer shall be those identified under state law rather than  
3 federal law.

4  
5 **UNIT CAPTIONS**

6  
7 **SECTION 25.** The unit captions used in this 2012 Act are provided only for the conven-  
8 ience of the reader and do not become part of the statutory law of this state or express any  
9 legislative intent in the enactment of this 2012 Act.

10  
11 **OPERATIVE DATE**

12  
13 **SECTION 26.** Except as provided in section 27 of this 2012 Act, this 2012 Act becomes  
14 operative on July 1, 2012.

15 **SECTION 27.** The Director of the Department of Consumer and Business Services may  
16 take any action before the operative date of this 2012 Act that is necessary to enable the  
17 director to exercise, on and after the operative date of this 2012 Act, all the duties, functions  
18 and powers conferred on the director by this 2012 Act.

19  
20 **EMERGENCY CLAUSE**

21  
22 **SECTION 28.** This 2012 Act being necessary for the immediate preservation of the public  
23 peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect  
24 on its passage.

**PROPOSED AMENDMENTS TO  
SENATE BILL 1547**

1 On page 1 of the printed bill, line 10, delete “and con-” and insert “,  
2 common control, common operation or common management”.

3 In line 11, delete “trol”.

4 Delete lines 12 through 14 and insert:

5 “(b) For purposes of this subsection, “common ownership, common con-  
6 trol, common operation or common management” means that two or more  
7 business entities are owned, controlled, operated or managed by the same  
8 person or group of persons with:”.

9 On page 2, line 24, delete the semicolon and insert a period.

10 On page 3, line 45, delete “or” and insert “and”.

11 On page 7, line 16, delete “provision” and insert “the provisions”.

12 In line 29, after “register” insert “with the department”.

13 In line 43, delete “in paragraph (c)”.

14 In line 44, delete “after providing notice and a public hearing”.

15 On page 8, line 20, delete “commercial” and after “risk” insert “distrib-  
16 ution”.

17 In line 39, after the comma insert “or in accordance with rules adopted  
18 under subsection (6) of this section,”.

19 On page 9, after line 28, insert:

20 “(6) The director may establish by rule criteria to waive or modify the  
21 requirements of this section relating to the frequency of reporting and the  
22 contents of the report.”.



1 On page 10, delete lines 9 through 11 and insert:

2 **“SECTION 15. Notwithstanding the limits of risk set forth in ORS**  
3 **731.504, any captive insurer for which the Director of the Department**  
4 **of Consumer and Business Services issues a certificate of authority**  
5 **under sections 2 to 22 of this 2012 Act must comply with sound**  
6 **actuarial principles as determined by the director and must submit**  
7 **reports demonstrating such compliance to the director.”.**

8 On page 11, line 11, after “examination” insert a period.

9 In line 43, delete “an” and insert “a valid”.

10 In line 44, after “Code” insert “of 1986”.

11

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**2012 Legislative Session  
AGENCY FISCAL IMPACT STATEMENT FORM**

Measure # SB 1547	Amendment -1 (e.g. original, -1, -2, A, B, etc.)
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<input checked="" type="checkbox"/>	<b>Fiscal Impact</b>	A fiscal impact determined to be greater than a minimal fiscal impact.
<input type="checkbox"/>	<b>Minimal Impact</b>	A fiscal impact that can be absorbed with existing agency resources.
<input type="checkbox"/>	<b>No Fiscal Impact</b>	The absence of an expenditure or revenue (non-tax) impact.

Effect on Expenditures	2011 – 2013	2013 – 2015
Personal Services	\$86,624	\$173,248
Services and Supplies	\$13,702	\$23,943
Capital Outlay		
Special Payments		
Totals	\$100,326	\$197,191

Effect on Revenues – Other Funds	2011 – 2013	2013 – 2015
Application Fees	\$100,330	
Continuation Fees		\$197,200
Totals	\$100,330	\$197,200

Positions/FTE (detail the number of positions, classification, step 2 and effective date for each):  
1.0 FTE , Insurance Examiner, C5748, Step 2, effective date 7/1/12

Does the proposed legislation impact a program that is part of the November 2011 required reduction option list? If yes, please describe this impact in the Written Analysis section of this form.

Yes  No

The budgetary impact of this bill was reviewed and approved by the Interim Joint Committee on Ways and Means to be recommended to be included in the omnibus budget bill.

Yes  No

Is the bill anticipated by the Governor's Recommended Budget as a Policy Option Package? If yes, please identify the Policy Option Package name and number in your written analysis.

Yes  No

Does the proposal have a fiscal or revenue mandate effect on cities, counties, or special districts that triggers evaluation under Section 15, Article XI of the Oregon Constitution?

Yes  No

**Comments:** (include all assumptions for cost or revenue per unit and number of units, if applicable. Attach as many worksheets as necessary to give complete information.)

SB 1547 allows the Director of DCBS to authorize captive insurers in Oregon. There is no existing law allowing captive insurers to operate in Oregon. Captive insurers are entities that provide insurance coverage to their parent or affiliate. They do not provide insurance to non-affiliated entities. Currently, they must meet the same licensing requirements as other insurers. However, captive insurers are primarily formed to insure the loss exposures of the parent company and affiliates, and do not provide insurance coverage to outside parties.

This bill sets standards regarding formation, ownership and management, licensing, capital and surplus requirements, investment requirements, reporting and examination requirements, and classes of insurance that a captive can transact. This will require a financial analyst to oversee the financial condition of the

captive insurers and to determine compliance with statutes, rules and national insurance accounting practices. Captive insurers would be examined by DCBS at the captive's expense.

**Regulatory Work:**

Ten captive insurers are anticipated to file to operate in Oregon. This additional workload would require one full-time Insurance Examiner, C5748, salary range 30. Workload for the new insurance examiner position would include:

Initial work (2,160 hours):

800 hours developing the program

88 hours (44 hours per application) reviewing applications with financial statements

480 hours certifying CPAs, captive managers and actuaries

Ongoing annual work (1,909 hours):

640 hours financial analysis and documentation

48 hours certification of additional CPAs captive managers and actuaries

480 hours filing issues follow-up, correspondence and miscellaneous filings

60 hours financial examination planning, report review, recommendation follow-up

104 hours training, continuing education, staff meetings

533 hours on-site financial examinations

**Training and Travel:**

This is a new area of insurance regulation for Oregon and would require annual travel for the examiner and their manager to attend the national Captive Insurance Companies Association meeting. Training expenses for statutory accounting and state regulation is anticipated since rarely do prospective employees have this experience. Total travel costs are \$10,800 and training costs are \$2,050.

Total biennial costs are \$100,326 for 2011-2013 and \$197,191 for 2013-2015.

Rulemaking would also be required and would include 40 hours for a Senior Policy Analyst and 20 hours for an Administrative Specialist 1. Staff time for rulemaking could be absorbed within existing resources.

**Revenue:**

An initial application fee of \$10,033 and annual renewal fee of \$9,860 (assuming 10 captive applications) is anticipated and may be adjusted or scaled on the basis of premiums the captive insurer collects annually, which will offset our operational costs. (Current application fee for insurers is \$2,500 with an annual \$1,500 continuation fee) Unlike other insurers, a captive insurer's fees are in lieu of premium assessments. Assuming 10 captive insurers apply, the 2011-2013 biennium revenues would be \$100,330 and the 2013-2015 biennium revenues would be \$197,200.

The bill declares an emergency and is effective upon passage, but has an operative date of July 1, 2012.

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-1 Amendments allow a captive insurer to participate in a pool for the purpose of risk distribution with the prior written approval of the Director of DCBS, and allows the Director of DCBS to establish by rule the criteria to waive or modify the annual financial reporting requirements related to the frequency of reporting and the contents of the report. No change in fiscal impact is anticipated.

Agency Name	Department of Consumer and Business Services
Preparer Name/Title	Shawn Waite/Budget Manager
Preparer Phone #	503-947-7952
Date	1/31/12

**FISCAL IMPACT OF PROPOSED LEGISLATION****Measure: SB 1547 - A**Seventy-Sixth Oregon Legislative Assembly – 2012 Regular Session  
Legislative Fiscal OfficePrepared by: Robin LaMonte  
Reviewed by: Steve Bender  
Date: February 3, 2012**Summary of Expenditure Impact**

	2011-13 Biennium	2013-15 Biennium
Other Funds	100,326	197,191
<b>Total Funds</b>	<b>\$100,326</b>	<b>\$197,191</b>
Positions	1	1
FTE	0.50	1.00

**Summary of Revenue Impact**

	2011-13 Biennium	2013-15 Biennium
Other Funds	100,330	197,200
<b>Total Funds</b>	<b>\$100,330</b>	<b>\$197,200</b>

**Measure Description:**

Allows Director of Department of Consumer and Business Services to authorize captive insurers in this state.

**Government Unit(s) Affected:**

Department of Consumer and Business Services (DCBS)

**Local Government Mandate:**

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

**Analysis:**

SB 1547 allows Director of Department of Consumer and Business Services to authorize captive insurers in Oregon and provides for the regulation of captive insurers. The bill has an emergency clause and is effective on passage.

The Department of Consumer and Business Services (DCBS) notes that "(t)here is no existing law allowing captive insurers to operate in Oregon. Captive insurers are entities that provide insurance coverage to their parent or affiliate. They do not provide insurance to non-affiliated entities. Currently, they must meet the same licensing requirements as other insurers. However, captive insurers are primarily formed to insure the loss exposures of the parent company and affiliates, and do not provide insurance coverage to outside parties."

This bill would require DCBS to oversee the financial condition of captive insurers. This will require one Insurance Examiner position. DCBS assumes that the position would be filled on July 1, 2012 and would cost \$86,624 in the 2011-13 biennium. Other expenses of \$13,702 Other Funds include travel and training

costs of \$12,050 and services and supplies costs of \$1,652. Rulemaking costs would be absorbed by DCBS.

DCBS is supported by fees for the services it provides. DCBS estimates that there are approximately 10 captive insurers in Oregon and that an initial application fee of \$10,033 would be required. The annual renewal fee would be \$9,860. The fee would be adjusted to reflect the actual number of insurers.

76<sup>th</sup> OREGON LEGISLATIVE ASSEMBLY – 2012 Session  
BUDGET REPORT AND MEASURE SUMMARY

MEASURE: SB 1547-B

Carrier – House: Rep. McLane  
Carrier – Senate: Sen. Starr

JOINT COMMITTEE ON WAYS AND MEANS

**Action:** Do Pass the A-Engrossed Measure as Amended and as Printed B-Engrossed

**Vote:** 23 – 0 – 2

**House – Yeas:** Beyer, Buckley, Cowan, Freeman, Garrard, Komp, McLane, Nathanson, Read, Richardson, G. Smith, Thatcher, Whisnant  
– **Nays:**  
– **Exc:** Nolan

**Senate – Yeas:** Bates, Devlin, Edwards, Girod, Johnson, Monroe, Thomsen, Verger, Whitsett, Winters  
– **Nays:**  
– **Exc:** Nelson

**Prepared By:** Kate Nass, Department of Administrative Services

**Reviewed By:** Robin LaMonte, Legislative Fiscal Office

**Meeting Date:** February 22, 2012

Agency  
Department of Consumer and Business Services

Budget Page  
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LFO Analysis Page  
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Biennium  
2011-13

**Budget Summary**

	2011-13 Legislatively Adopted Level	2012 Committee Recommendation	Committee Change from 2011-13 Leg. Adopted
Other Funds – Limited	\$ 200,775,789	\$ 100,326	\$ 100,326
Other Funds – Non-limited	\$ 197,419,009	\$ 0	\$ 0
Federal Funds	\$ 753,662	\$ 0	\$ 0
Total	\$ 398,948,460	\$ 100,326	\$ 100,326
			% Change
			0.05%
			0.00%
			0.00%
			0.03%

**Position Summary**

Authorized Positions 930  
 Full-time Equivalent (FTE) positions 919.68

1 0.11%  
 0.50 0.05%

**Summary of Revenue Changes**

Senate Bill 1547 allows the Director of the Department of Consumer and Business Services (DCBS) to authorize captive insurers in Oregon and provides for the regulation of captive insurers. Captive insurers are entities that provide insurance coverage for their parent or affiliate companies. DCBS is supported by fees for the services it provides. DCBS estimates that there are approximately ten captive insurers in Oregon that would be charged an application and annual renewal fee, increasing Other Fund revenue by \$100,330.

**Summary of Committee Action**

Senate Bill 1547 requires that DCBS oversee the financial condition of captive insurers. DCBS would establish one permanent full-time Insurance Examiner position (0.50 full time equivalent) for the remainder of the biennium to conduct this financial oversight, funded by the application and licensing fees paid by the captive insurers.

**DETAIL OF JOINT COMMITTEE ON WAYS AND MEANS ACTION**

**SB 1547-B**

Department of Consumer and Business Services  
 Kate Nass -- (503) 378-3742

DESCRIPTION	GENERAL FUND	LOTTERY FUNDS	OTHER FUNDS		FEDERAL FUNDS		TOTAL ALL FUNDS	POS	FTE
			LIMITED	NONLIMITED	LIMITED	NONLIMITED			
2011-13 LEGISLATIVELY ADOPTED BUDGET	\$0	\$0	\$200,775,789	\$197,419,009	\$753,662	\$0	\$398,948,460	930	919.68
<b>SUBCOMMITTEE ADJUSTMENTS (from LAB)</b>									
Captive Insurers Authorization			86,624				86,624	1	0.50
Personal Services			13,702				13,702		
Services and Supplies									
<b>TOTAL ADJUSTMENTS</b>	\$0	\$0	\$100,326	\$0	\$0	\$0	\$100,326	1	0.50
<b>SUBCOMMITTEE RECOMMENDATION *</b>	\$0	\$0	\$200,876,115	\$197,419,009	\$753,662	\$0	\$399,048,786	931	920.18
% Change from 2011-13 Leg Adopted Budget	0.00%	0.00%	0.05%	0.00%	0.00%	0.00%	0.03%	0.11%	0.05%

\* Excludes Capital Construction Expenditures