

A-Engrossed
House Bill 3261

Ordered by the House May 3
Including House Amendments dated May 3

Sponsored by COMMITTEE ON REVENUE

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.

Provides for issuance of tax warrants without Department of Revenue direction to county sheriff to seize and sell taxpayer's real and personal property. Provides separate authority for department to order county sheriff to seize and sell taxpayer's real and personal property **and to seize currency of taxpayer**. Requires that department notice and demand for payment be sent to taxpayer at least 30 days prior to issuance of warrant. Requires department to include in notice accounting of payments by taxpayer and information about consequences of noncompliance.

Applies to warrants issued by department on or after January 1, 2012.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tax warrants; creating new provisions; amending ORS 305.895, 314.430, 320.080, 321.570,
3 323.390, 323.610 and 324.190; and prescribing an effective date.

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

5 **SECTION 1.** ORS 314.430 is amended to read:

6 314.430. (1) If any tax imposed under ORS chapter 118, 316, 317 or 318 or any portion of the tax
7 is not paid within 30 days after the date that the written notice and demand for payment required
8 under ORS 305.895 is mailed (or within five days after the tax becomes due, in the case of the ter-
9 mination of the tax year by the Department of Revenue under the provisions of ORS 314.440) and
10 no provision is made to secure the payment thereof by bond, deposit or otherwise, pursuant to reg-
11 ulations promulgated by the department, the department may issue a warrant [*directed to the sheriff*
12 *of any county of the state commanding the sheriff to levy upon and sell the real and personal property*
13 *of the taxpayer found within that county,*] for the payment of the amount of the tax, with the added
14 penalties, interest[,] **and any** collection charge **incurred**. [*and the sheriff's cost of executing the*
15 *warrant, and to return such warrant to the department and pay to it the money collected by virtue*
16 *thereof by a time to be therein specified, not less than 60 days from the date of the warrant.*] A copy
17 of the warrant shall be mailed or delivered to the taxpayer by the department at the taxpayer's
18 last-known address.

19 [(2) *The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the*
20 *county a copy thereof, and thereupon the clerk shall enter in the County Clerk Lien Record the name*
21 *of the taxpayer mentioned in the warrant, and the amount of the tax or portion thereof and penalties*
22 *for which the warrant is issued and the date when such copy is recorded. Thereupon the amount of*
23 *the warrant so recorded shall become a lien upon the title to and interest in property of the taxpayer*
24 *against whom it is issued in the same manner as a judgment duly recorded. The sheriff thereupon shall*
25 *proceed upon the same in all respects, with like effect and in the same manner prescribed by law in*

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 *respect to executions issued against property upon judgment of a court of record, and shall be entitled*
 2 *to the same fees for services in executing the warrant, to be added to and collected as a part of the*
 3 *warrant liability.]*

4 **(2) At any time after issuing a warrant under this section, the department may record**
 5 **the warrant in the County Clerk Lien Record of any county of this state. Recording of the**
 6 **warrant has the effect described in ORS 205.125. After recording a warrant, the department**
 7 **may direct the sheriff for the county in which the warrant is recorded to levy upon and sell**
 8 **the real and personal property of the taxpayer found within that county, and to levy upon**
 9 **any currency of the taxpayer found within that county, for the application of the proceeds**
 10 **or currency against the amount reflected in the warrant and the sheriff's cost of executing**
 11 **the warrant. The sheriff shall proceed on the warrant in the same manner prescribed by law**
 12 **for executions issued against property pursuant to a judgment, and is entitled to the same**
 13 **fees as provided for executions issued against property pursuant to a judgment. The fees of**
 14 **the sheriff shall be added to and collected as a part of the warrant liability.**

15 (3) In the discretion of the department a warrant *[of like terms, force and effect may be issued*
 16 *and]* **under this section may be** directed to any agent authorized **by the department** to collect
 17 taxes, and in the execution *[thereof]* **of the warrant** the agent *[shall have]* **has** all **of** the powers
 18 conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses
 19 paid in the performance of such duty.

20 (4) *[If]* **Until a warrant issued under this section** is *[returned not]* satisfied in full, the depart-
 21 ment *[shall have]* **has** the same remedies to enforce the claim for taxes against the taxpayer as if
 22 *[the people of]* the state had recovered judgment against the taxpayer for the amount of the tax, *and*
 23 *shall balance the assessment record of the taxpayer by transferring the unpaid deficiency to the*
 24 *taxpayer's delinquent record].*

25 **SECTION 2.** ORS 320.080 is amended to read:

26 320.080. (1) If any tax or penalty imposed by ORS 320.005 to 320.150 is not paid as required by
 27 ORS 320.005 to 320.150 within 30 days after the date that the written notice and demand for payment
 28 required under ORS 305.895 is mailed, the Department of Revenue shall issue a warrant *[directed to*
 29 *the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal*
 30 *property of the person or persons named in the warrant and liable for the tax found within the*
 31 *county,]* for the payment of the amount *[thereof]* **of the tax**, with the added penalty and the cost of
 32 executing the warrant, *and to return the warrant to the department and pay to it the money collected*
 33 *by virtue thereof by a time to be therein specified not more than 30 days from the date of the*
 34 *warrant].* A copy of the warrant shall be mailed or delivered to the taxpayer by the department at
 35 the taxpayer's last-known address.

36 *[(2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the*
 37 *county a copy thereof. Thereupon the clerk shall enter in the County Clerk Lien Record the names of*
 38 *the persons mentioned in the warrant, and the amount of the tax and penalty for which the warrant*
 39 *is issued and the date when such copy is recorded. Thereupon the amount of the warrant so recorded*
 40 *shall become a lien upon the title to any interest in real property or personal property of the persons*
 41 *against whom it is issued in the same manner as a judgment that creates a judgment lien under ORS*
 42 *chapter 18. The sheriff shall thereupon proceed upon the same in all respects, with like effect and in*
 43 *the manner prescribed by law in respect to execution issued against property upon judgment of a court*
 44 *of record, and the sheriff is entitled to the same fees for services in executing the warrant to be collected*
 45 *in the same manner. If a warrant is returned not satisfied in full, the department shall have the same*

1 *remedies to enforce the claim for taxes as if the people of the state had recovered judgment for the*
2 *amount of the tax.]*

3 **(2) At any time after issuing a warrant under this section, the department may record**
4 **the warrant in the County Clerk Lien Record of any county of this state. Recording of the**
5 **warrant has the effect described in ORS 205.125. After recording a warrant, the department**
6 **may direct the sheriff for the county in which the warrant is recorded to levy upon and sell**
7 **the real and personal property of the taxpayer found within that county, and to levy upon**
8 **any currency of the taxpayer found within that county, for the application of the proceeds**
9 **or currency against the amount reflected in the warrant and the sheriff's cost of executing**
10 **the warrant. The sheriff shall proceed on the warrant in the same manner prescribed by law**
11 **for executions issued against property pursuant to a judgment, and is entitled to the same**
12 **fees as provided for executions issued against property pursuant to a judgment. The fees of**
13 **the sheriff shall be added to and collected as a part of the warrant liability.**

14 **(3) In the discretion of the department a warrant under this section may be directed to**
15 **any agent authorized by the department to collect taxes, and in the execution of the warrant**
16 **the agent has all of the powers conferred by law upon sheriffs, but is entitled to no fee or**
17 **compensation in excess of actual expenses paid in the performance of such duty.**

18 **(4) Until a warrant issued under this section is satisfied in full, the department has the**
19 **same remedies to enforce the claim for taxes against the taxpayer as if the state had re-**
20 **covered judgment against the taxpayer for the amount of the tax.**

21 **SECTION 3.** ORS 321.570 is amended to read:

22 321.570. (1) If any tax imposed by ORS 321.005 to 321.185, 321.560 to 321.600 or 321.700 to
23 321.754, or any portion of the tax, is not paid within 30 days after the date that the written notice
24 and demand for payment required under ORS 305.895 is mailed, the Department of Revenue may is-
25 sue a warrant[, *directed to the sheriff of any county of the state, commanding the sheriff to levy upon*
26 *and sell the real and personal property of the taxpayer owning the same, found within that county,]* for
27 the payment of the amount of the tax, with the added penalties, interest and cost of executing the
28 warrant[, *and to return the warrant to the department and to pay to it the money collected from the*
29 *sale, within 60 days after receipt of the warrant].* A copy of the warrant shall be mailed or delivered
30 to the taxpayer by the department at the taxpayer's last-known address.

31 *[(2) The sheriff shall, within five days after the receipt of the warrant, record a copy with the*
32 *county clerk, and the clerk shall immediately enter in the County Clerk Lien Record the name of the*
33 *taxpayer mentioned in the warrant, and the amount of the tax or portion of the tax and penalties for*
34 *which the warrant is issued and the date when the copy is recorded. The amount of the warrant so*
35 *recorded shall become a lien upon the title to and interest in real property of the taxpayer against*
36 *which it is issued, in the same manner as a judgment that creates a judgment lien under ORS chapter*
37 *18. The sheriff immediately shall proceed upon the warrant in all respects, with like effect, and in the*
38 *same manner prescribed by law in respect to executions issued against property upon judgments of a*
39 *court of record, and shall be entitled to the same fees for services in executing the warrant, to be added*
40 *to and collected as a part of the warrant liability.]*

41 **(2) At any time after issuing a warrant under this section, the department may record**
42 **the warrant in the County Clerk Lien Record of any county of this state. Recording of the**
43 **warrant has the effect described in ORS 205.125. After recording a warrant, the department**
44 **may direct the sheriff for the county in which the warrant is recorded to levy upon and sell**
45 **the real and personal property of the taxpayer found within that county, and to levy upon**

1 **any currency of the taxpayer found within that county, for the application of the proceeds**
 2 **or currency against the amount reflected in the warrant and the sheriff's cost of executing**
 3 **the warrant. The sheriff shall proceed on the warrant in the same manner prescribed by law**
 4 **for executions issued against property pursuant to a judgment, and is entitled to the same**
 5 **fees as provided for executions issued against property pursuant to a judgment. The fees of**
 6 **the sheriff shall be added to and collected as a part of the warrant liability.**

7 (3) In the discretion of the department a warrant [*of like terms, force and effect may be issued*
 8 *and*] **under this section may be** directed to any agent authorized **by the department** to collect
 9 this tax. In the execution of the warrant[, *such*] **the** agent has the powers conferred by law upon
 10 sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the perform-
 11 ance of such duty.

12 (4) [*If*] **Until a warrant issued under this section** is [*returned not*] satisfied in full, the depart-
 13 ment [*shall have*] **has** the same remedies to enforce the claim for taxes against the taxpayer as if
 14 the state had [*a recorded*] **recovered** judgment against the taxpayer for the amount of the tax.

15 **SECTION 4.** ORS 323.390 is amended to read:

16 323.390. (1) If any tax imposed by ORS 323.005 to 323.482 or any portion of such tax is not paid
 17 within 30 days after notice of a deficiency determination is given pursuant to ORS 323.403 or of a
 18 tax determined under ORS 323.385, and no provision is made to secure the payment thereof by bond,
 19 deposit or otherwise, pursuant to regulations promulgated by the Department of Revenue, the de-
 20 partment shall:

21 (a) Assess a collection charge of \$5 if the sum of the tax, penalty and interest then due exceeds
 22 \$10.

23 (b) Issue a warrant [*directed to the sheriff of any county of the state commanding the sheriff to levy*
 24 *upon and sell the real and personal property of the taxpayer found within that county,*] for the payment
 25 of the amount of the tax, with the added penalties, interest, collection charge and the sheriff's cost
 26 of executing the warrant[, *and to return such warrant to the department and pay to it the money col-*
 27 *lected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the*
 28 *warrant*]. **A copy of the warrant shall be mailed or delivered to the taxpayer by the depart-**
 29 **ment at the taxpayer's last-known address.**

30 [(2) *The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the*
 31 *county a copy thereof, and thereupon the clerk shall enter in the County Clerk Lien Record the name*
 32 *of the taxpayer mentioned in the warrant, and the amount of the tax or portion thereof and penalties*
 33 *and interest for which the warrant is issued and the date when such copy is recorded. Thereupon the*
 34 *amount of the warrant so recorded shall become a lien upon the title to and interest in property of the*
 35 *taxpayer against whom it is issued in the same manner as a judgment that creates a judgment lien*
 36 *under ORS chapter 18. The sheriff thereupon shall proceed upon the same in all respects, with like*
 37 *effect and in the same manner prescribed by law in respect to executions issued against property upon*
 38 *judgment of a court of record, and shall be entitled to the same fees for services in executing the war-*
 39 *rant, to be added to and collected as a part of the warrant liability.*]

40 (2) **At any time after issuing a warrant under this section, the department may record**
 41 **the warrant in the County Clerk Lien Record of any county of this state. Recording of the**
 42 **warrant has the effect described in ORS 205.125. After recording a warrant, the department**
 43 **may direct the sheriff for the county in which the warrant is recorded to levy upon and sell**
 44 **the real and personal property of the taxpayer found within that county, and to levy upon**
 45 **any currency of the taxpayer found within that county, for the application of the proceeds**

1 or currency against the amount reflected in the warrant and the sheriff's cost of executing
 2 the warrant. The sheriff shall proceed on the warrant in the same manner prescribed by law
 3 for executions issued against property pursuant to a judgment, and is entitled to the same
 4 fees as provided for executions issued against property pursuant to a judgment. The fees of
 5 the sheriff shall be added to and collected as a part of the warrant liability.

6 (3) In the discretion of the department a warrant [*of like terms, force and effect may be issued*
 7 *and*] **under this section may be** directed to any agent authorized **by the department** to collect
 8 income taxes, and in the execution [*thereof*] **of the warrant** the agent [*shall have*] **has all of** the
 9 powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual
 10 expenses paid in the performance of such duty.

11 (4) [*If*] **Until a warrant issued under this section** is [*returned not*] satisfied in full, the depart-
 12 ment [*shall have*] **has** the same remedies to enforce the claim for taxes against the taxpayer as if
 13 [*the people of*] the state had recovered judgment against the taxpayer for the amount of the tax.

14 **SECTION 5.** ORS 323.610 is amended to read:

15 323.610. (1) If any tax imposed under ORS 323.500 to 323.645, or any portion of the tax, is not
 16 paid within the time provided by law and no provision is made to secure the payment of the tax by
 17 bond, deposit or otherwise, pursuant to rules adopted by the Department of Revenue, the department
 18 may issue a warrant [*directed to the sheriff of any county of the state commanding the sheriff to levy*
 19 *upon and sell the real and personal property of the taxpayer found within the county,*] for the payment
 20 of the amount of the tax, with the added penalties, interest and the sheriff's cost of executing the
 21 warrant[, *and to return the warrant to the department and pay to it the money collected from the sale,*
 22 *within 60 days after the date of receipt of the warrant*]. **A copy of the warrant shall be mailed or**
 23 **delivered to the taxpayer by the department at the taxpayer's last-known address.**

24 [*(2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the*
 25 *county a copy of the warrant, and the clerk shall immediately enter in the County Clerk Lien Record*
 26 *the name of the taxpayer mentioned in the warrant, the amount of the tax or portion of the tax and*
 27 *penalties for which the warrant is issued and the date the copy is recorded. The amount of the warrant*
 28 *so recorded shall become a lien upon the title to and interest in real property of the taxpayer against*
 29 *whom it is issued in the same manner as a judgment that creates a judgment lien under ORS chapter*
 30 *18. The sheriff immediately shall proceed upon the warrant in all respects, with like effect and in the*
 31 *same manner prescribed by law in respect to executions issued against property upon judgment of a*
 32 *court of record, and shall be entitled to the same fees for services in executing the warrant, to be added*
 33 *to and collected as a part of the warrant liability.*]

34 (2) **At any time after issuing a warrant under this section, the department may record**
 35 **the warrant in the County Clerk Lien Record of any county of this state. Recording of the**
 36 **warrant has the effect described in ORS 205.125. After recording a warrant, the department**
 37 **may direct the sheriff for the county in which the warrant is recorded to levy upon and sell**
 38 **the real and personal property of the taxpayer found within that county, and to levy upon**
 39 **any currency of the taxpayer found within that county, for the application of the proceeds**
 40 **or currency against the amount reflected in the warrant and the sheriff's cost of executing**
 41 **the warrant. The sheriff shall proceed on the warrant in the same manner prescribed by law**
 42 **for executions issued against property pursuant to a judgment, and is entitled to the same**
 43 **fees as provided for executions issued against property pursuant to a judgment. The fees of**
 44 **the sheriff shall be added to and collected as a part of the warrant liability.**

45 (3) In the discretion of the department a warrant [*of like terms, force and effect*] **under this**

1 **section** may be [*issued and*] directed to any agent authorized **by the department** to collect the
 2 taxes imposed by ORS 323.500 to 323.645. In the execution of the warrant[,] the agent [*shall have*]
 3 **has** all of the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in
 4 excess of actual expenses paid in the performance of such duty.

5 (4) [*If*] **Until** a warrant **issued under this section** is [*returned not*] satisfied in full, the depart-
 6 ment [*shall have*] **has** the same remedies to enforce the claim for taxes against the taxpayer as if
 7 [*the people of*] the state had recovered judgment against the taxpayer for the amount of the tax.

8 **SECTION 6.** ORS 324.190 is amended to read:

9 324.190. (1) If any tax imposed by this chapter, or any portion of such tax, is not paid within 30
 10 days after the date that the written notice and demand for payment required under ORS 305.895 is
 11 mailed, the Department of Revenue shall issue a warrant[, *directed to the sheriff of any county of the*
 12 *state, commanding the sheriff to levy upon and sell the real and personal property of the person owing*
 13 *the tax, found within that county, for the payment in the amount thereof*] **for the payment of the**
 14 **amount of the tax**, with the added penalties, interest and cost of executing the warrant[, *and to*
 15 *return the warrant to the department and to pay to it the money collected by virtue thereof, within 60*
 16 *days after receipt of the warrant*]. A copy of the warrant shall be mailed or delivered to the taxpayer
 17 by the department at the taxpayer's last-known address.

18 [(2) *The sheriff shall, within five days after the receipt of the warrant, record a copy with the*
 19 *county clerk, and thereupon the clerk shall enter in the County Clerk Lien Record the name of the*
 20 *person mentioned in the warrant, and the amount of the tax or portion thereof and penalties for which*
 21 *the warrant is issued and the date when the copy is recorded. Thereupon the amount of the warrant*
 22 *so recorded shall become a lien upon the title to and interest in real property of the person against*
 23 *which it is issued, in the same manner as a judgment that creates a judgment lien under ORS chapter*
 24 *18. The sheriff thereupon shall proceed upon the warrant in all respects, with like effect, and in the*
 25 *same manner prescribed by law in respect to executions issued against property upon judgments of a*
 26 *court of records, and shall be entitled to the same fees for services in executing the warrant, to be*
 27 *added to and collected as a part of the warrant liability.*]

28 (2) **At any time after issuing a warrant under this section, the department may record**
 29 **the warrant in the County Clerk Lien Record of any county of this state. Recording of the**
 30 **warrant has the effect described in ORS 205.125. After recording a warrant, the department**
 31 **may direct the sheriff for the county in which the warrant is recorded to levy upon and sell**
 32 **the real and personal property of the taxpayer found within that county, and to levy upon**
 33 **any currency of the taxpayer found within that county, for the application of the proceeds**
 34 **or currency against the amount reflected in the warrant and the sheriff's cost of executing**
 35 **the warrant. The sheriff shall proceed on the warrant in the same manner prescribed by law**
 36 **for executions issued against property pursuant to a judgment, and is entitled to the same**
 37 **fees as provided for executions issued against property pursuant to a judgment. The fees of**
 38 **the sheriff shall be added to and collected as a part of the warrant liability.**

39 (3) In the discretion of the department a warrant [*of like terms, force and effect may be issued*
 40 *and*] **under this section may be** directed to any agent [*of the department*] authorized by [*it*] **the**
 41 **department** to collect this tax. In the execution of the warrant[, *such*] **the** agent has the powers
 42 conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses
 43 paid in the performance of such duty.

44 (4) [*If*] **Until** a warrant **under this section** is [*returned not*] satisfied in full, the department
 45 [*shall have*] **has** the same remedies to enforce the claim for taxes against the [*owner*] **taxpayer** as

1 if the state had a recorded judgment against the [owner] taxpayer for the amount of the tax.

2 **SECTION 7.** ORS 305.895 is amended to read:

3 305.895. (1) Except as provided in ORS 314.440 or other jeopardy assessment procedure, the
4 Department of Revenue shall take no action against a taxpayer's real or personal property before
5 issuing a warrant for the collection of the tax as provided in ORS 314.430, 320.080, 321.570, **323.390,**
6 **323.610** and 324.190.

7 (2) [Prior to] **At least 30 days before** issuing a warrant for collection of any tax collected by
8 the department, the department shall send the taxpayer a written notice and demand for payment.
9 The notice shall:

10 (a) Be sent by mail, addressed to the taxpayer at the taxpayer's last-known address.

11 (b) Inform the taxpayer that, **even if the taxpayer is compliant with an installment agree-**
12 **ment between the taxpayer and the department and is in communication with the depart-**
13 **ment,** if the tax or any portion of the tax is not paid within 30 days after the date of the notice
14 and demand for payment, a warrant may be issued and recorded as provided in ORS 314.430, 320.080,
15 321.570, **323.390, 323.610** and 324.190.

16 (c) Describe in clear nontechnical terms the legal authority for the warrant.

17 (d) Contain the name, office mailing address and office telephone number of the person issuing
18 the warrant and advise the taxpayer that questions or complaints concerning the warrant, other
19 than liability for the underlying tax, may be directed to that person.

20 (e) Include alternatives available to the taxpayer which would prevent issuance of the warrant.

21 (f) **Inform the taxpayer of possible consequences to the taxpayer of noncompliance, and**
22 **of issuance of a warrant, including garnishment of wages or bank accounts and seizure and**
23 **sale of real or personal property.**

24 **SECTION 8.** The amendments to ORS 305.895, 314.430, 320.080, 321.570, 323.390, 323.610 and
25 324.190 by sections 1 to 7 of this 2011 Act apply to warrants issued by the Department of
26 Revenue on or after January 1, 2012.

27 **SECTION 9.** This 2011 Act takes effect on the 91st day after the date on which the 2011
28 regular session of the Seventy-sixth Legislative Assembly adjourns sine die.

29