

**HOUSE OF REPRESENTATIVES**

**THIRD READING ALERT**

**PROJECTED THIRD READINGS FOR TUESDAY, JUNE 28, 2011**

**HOUSE CONVENES AT 10:00 A.M.**

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BILL# COMM RECOMMENDATION Filed CARRIER

PROPOSITIONS AND MOTIONS:

(Possible Consideration of Senate Amendments)

**HB 2244 B-Eng GGCP 06/13/11 Holvey/Whisnant**

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Note:

**Bill will modify definition of "public record for purposes of public records retention and disclosure laws.**

Requires state agencies to adopt written policies regarding Use, access, retention, and ownership of public records. Bill also appears to allow each agency to have different policies.

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Amends definition of "public record" in ORS 192.005 to include information that meets the following criteria: prepared, owned, used or retained by a state agency or political subdivision; relates to an activity, transaction or function of a state agency or political subdivision; and is necessary to satisfy the fiscal, legal, administrative or historical policies, requirements or needs of the state agency or political subdivision. Clarifies that "public record" does not include records of the Judicial Department, its officers or subdivisions, or spoken communication that is not recorded. Requires state agencies to have a written policy that sets forth the agency's use, retention and ownership of public records and to submit the written policy to the State Archivist for approval before the policy takes effect. Requires state agencies to maintain a public record without regard to the technology or medium used to create or communicate the record. Exempts from disclosure records of domestic violence service or resource center that concern individuals affected by domestic or sexual violence who visit center for referrals, resource information or related services, or individuals' family members. Declares emergency, effective on passage Senate amendments replace the A-engrossed measure. (Senate vote: 27-0)

Please note: Has minimal fiscal impact, no statement issued.

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**HB 2726 B-Eng HC 06/23/11 Greenlick/Thompson**

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Note:

This is a bad bill as it prohibitively restricts business so that no business can be transacted. Puts limits on number of people inside the business, size of the building, and other provisions. This bill points out a major distinction between the thinking of a conservative and a progressive/ Liberal. If a progressive/ liberal/democrat/ doesn't like something they must outlaw it so everyone else cannot make a free choice themselves. When a conservative, doesn't smoke, they don't try to outlaw smoking for others, they just don't go into smoke shops.

Senate amendments allow certain establishments to remain in business if they were operating before a certain time frame and meet other requirements.

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Requires Oregon Health Authority (OHA) to adopt rules establishing certification system for smoke shops. Requires recertification every five years instead of annually. Modifies definition of smoke shop for purpose of Oregon Indoor Clean Air Act by limiting seating to four persons, prohibiting food and beverage, allowing smoking for sampling only, and granting OHA unannounced inspection authority. Requires OHA to certify smoke shop businesses that, as of December 31, 2008 were either standalone or had ventilation system that exhaust smoke. Allows smoke shops, that met specified criteria as of December 31, 2008, to continue to be certified and allows smoke shop in attached structure to continue to be certified in new location if new location meets specified size requirements. Creates "grandfather clause" to allow existing smoke shops to continue operating, and to include those with applications pending before effective date of Act, whose certification process will be completed by December 31, 2012. Allows smoke shop to change owners and to move to new location not larger than 3,500 square feet. Specifies that new location larger than 2,500 square feet may not be more than 10 percent larger than previous location. Specifies that cigarettes may not be smoked unless 75 percent of revenues are from cigarettes. Increases violations from \$2,000 to \$4,000 per month. Declares emergency, effective on passage. Senate amendments add requirement that OHA certify smoke shop business that, as of December 31, 2008, were either standalone businesses or had ventilation systems that exhaust smoke and met specified criteria. Allows smoke shops, that met specified criteria as of December 31, 2008, to continue to be certified and allows smoke shop in attached structure to continue to be certified in new location if new location meets specified size requirements. Changes application filing date from December 31, 2010 to effective date of Act; changes certification deadline from July 1, 2011 to December 31, 2012. (Senate vote: Ayes, 18; Nays, 11--Beyer, Bonamici, Burdick, Dingfelder, Johnson, Kruse, Monnes Anderson, Rosenbaum, Shields, Thomsen, Whitsett)

Please note: Has Fiscal Impact Statement

Please note: Has minimal fiscal impact, no statement issued.

(Consideration of Conference Committee Reports:

(Carried over from Monday, June 27, 2011 Calendar)

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**HB 2792 B-Eng\*** Conference Hse concur, amend, repass 06/23/11 Barker

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Note:

This bill Passed the house already with all republicans and about a dozen democrats voting for this bill. Berger, clem, weidner did not vote.

Passed the senate with Larry George as the only vote against the bill.

The a-engrossed bill is far different than the original introduced bill as the original had nothing to do with off road vehicles or appeal rights of felons, and had the intent of allowing handgun reciprocity between states. The senate amended b-engrossed bill is vastly different as well. The conference committee has approved moving forward on the b-engrossed version with only 2 small time changes.

Allows persons to possess firearms while operating motorcycles, all-terrain vehicles and snowmobiles so long as firearm is in locked container or equipped with trigger inhibitor. Permits persons operating snowmobiles to carry unloaded firearm, bow, or concealed handgun. Prohibits reinstatement of gun rights for persons convicted of person-felonies involving a firearm or deadly weapon, for persons convicted of crimes requiring imposition of a minimum mandatory sentence, and for one year after end of jurisdiction for other convicted felons. Declares emergency, effective on passage. Conference Committee amendments permit otherwise eligible convicted felons to seek reinstatement of gun rights one year after the end of jurisdiction rather than three. (Committee Vote: 5 - 0 - 0)

Please note: Has minimal fiscal impact, no statement issued.

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HOUSE BILLS:

(Carried over from Monday, June 27, 2011 Calendar)

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**HB 5030 A-Eng** WM dpa PE 06/10/11 Kotek

**Budget:** Department of Human Services (Committee vote: Ayes, 13 – Beyer, Cowan, Freeman, Garrard, Komp, Kotek, McLane, Nathanson, G. Smith, Thatcher, Whisnant, Buckley, Richardson; Nays, 1 – Nolan)

Please note: Has Budget Report.

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HOUSE BILLS:

**HB 5056 A-Eng** WM dpa PE 06/27/11 Olson

Appropriates General Fund dollars that is generated from civil filing fee revenues under HB 2710. (Committee vote: Ayes, 12 – Beyer, Cowan, Garrard, Komp, Kotek, McLane, Nathanson, Nolan, G. Smith, Whisnant, Buckley, Richardson; Nays, 2 – Freeman, Thatcher)

Please note: Has Budget Report.

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HOUSE BILLS:

(Requires Rule Suspension)

**HB 2710 B-Eng** WM dpa PE 06/27/11 Olson

Updates and simplifies the current statutory revenues and distribution structure related to civil filing fees and assessments. (Committee vote: 14-0)

Relating to courts

To date this bill has been passed by judiciary committee in House and was moved to ways and means about 2 months ago where it has been sitting. Passed ways and means yesterday.

From Fiscal Impact Statement:

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The measure establishes a civil filing fee structure in statute. All of the fees are permanent and become effective July 1, 2011. The fees are fixed dollar amounts and do not include any add-on charges or surcharges. Fee amounts are uniform across all the state courts.

The fiscal impact of this measure is based on 24-months of revenue. OJD requires 120 days after the bill becomes law to implement the changes. This means that the measure must be enacted into law prior to April 15, 2011, if it is to be implemented on July 1, 2011.

The measure includes language that would provide for a statutory allocation of funds to a list of eligible entities.

The measure is estimated to generate \$86.7 million in total revenue, including a margin of error. Of this amount, at least \$12.1 million would be distributed to the Oregon State Bar for Legal Aid Services; \$17.2 million will be distributed to counties; \$3.7 million to other entities, and \$53.8 million to the General Fund. However, the Oregon Judicial Department (OJD) revenue management assessment of approximately eight percent would apply to all amounts collected. This would equal \$6.9 million and be deducted from the amount going to the General Fund. Therefore, the unallocated balance to be distributed to the General Fund would become \$46.9 million.

State General Fund revenue from civil filing fees in 2009-11, including HB 2287 surcharges, is \$62.1 million, according to an estimate prepared by the Judicial Department. Therefore, this bill as amended, would result in a net decrease in 2011-13 General Fund revenue of \$15.2 million.

From bill summary: Corrects omission of exemption for declaratory judgment cases from multiple party fees and allows refund for cases filed during specified time frame. Reinstates Council on Court Procedures and Oregon Law Commission among entities eligible to receive distributions. Allows for method of calculation based on a percentage of filing fees for legal aid, law libraries, court facilities, and reconciliation/mediation, with legal aid guaranteed 14 percent of total civil filings, and the remaining three entities distributed by each county, to reflect 70 percent of domestic relations filings plus 10 percent of other civil filings, in the respective county. Changes fees as follows: domestic relations \$300; forcible entry or wrongful detainer \$75; garnishment \$35; and circuit court document fee \$10. Reinstates civil filing fee category for claims involving less than \$10,000 and sets fee at \$140. Sets civil filing fee for claims involving \$10,000 to 50,000 at \$250. Modifies small claims jurisdiction and adjust small claims filing fees to achieve a more graduated structure. Increases amount of costs recoverable in small claims to \$100 for cases resolved short of trial, and to \$115 for cases tried. Raises filing fees in

justice courts to \$40 each for plaintiff and defendant in civil actions, \$28 each for small claims, and increases document fee to \$6.

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Please note: Has Fiscal Impact Statement

Please note: Has Revenue Impact Statement

Requires a 3/5 Majority.

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**HB 2712 B-Eng WM dpa PE 06/27/11 Olson**

Updates and simplifies the current statutory revenue and distribution structure related to criminal finds, assessments, and other financial penalties imposed on conviction for felonies, misdemeanors, and violations other than parking infractions. (Committee vote: Ayes, 12 – Beyer, Cowan, Garrard, Komp, Kotek, McLane, Nathanson, Nolan, G. Smith, Whisnant, Buckley, Richardson)

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Note: To date this bill has also been passed by judiciary committee in House and was moved to ways and means about 2 months ago where it has been sitting until Monday when it passed ways and means.

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From Revenue impact statement:

House Bill 2712A is one of three measures resulting from the efforts of the Joint Interim Committee on State Justice System Revenues (the Committee), which was established by House Bill 2287 (2009) and which met almost monthly between October 2009 and January 2011. HB 2712A and its companion measures are intended to replace HB 2287, which sunsets June 30, 2011, in order to continue adequately funding Oregon's courts. House Bill 2712A establishes a more uniform structure for application of payments received from defendants in traffic and criminal cases and creates a Criminal Fines Account to centralize funds from which allocations are made for specific purposes.

The measure drastically changes the revenue structure and needs to be thoroughly examined in ways and means committee. This revenue impact statement is issued to facilitate that move.

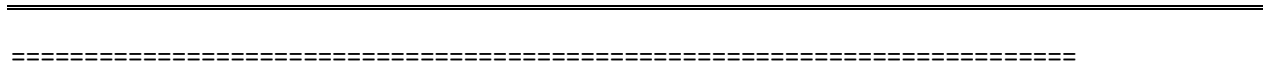
From Bill summary: Modifies presumptive fines for violations. Establishes same as minimums and prohibits downward deviation. Modifies maximum fines for violations by individuals and corporations. Provides for notice of presumptive/minimum fines on face of citation. Modifies minimum fines for crimes. Permits courts to waive in whole or part. Sets minimum fines for specific methamphetamine crimes. Sets range of fines, if ordered, for reduced crimes. Requires assessment of minimum fine for crime upon sentence of discharge. Modifies structure for disposition of fines collected for traffic offenses by circuit courts, justice courts, and municipal courts. Replaces Criminal Fine and Assessment Account with Criminal Fine Account (CFA). Creates two subaccounts within the CFA, a Public Safety subaccount for 70 percent of the total collected, and a Miscellaneous Distributions subaccount for the remaining 30 percent. Directs distributions from the Public Safety subaccount to the following entities for specific



purposes: Department of Public Safety Standards and Training, Department of Human Services, Oregon Health Authority, and Department of Justice. Directs distributions from the Miscellaneous Distributions subaccount to Law Enforcement Medical Liability Account, State Court Facilities Security Account, State Court Administrator for Court Security Program distributions, Department of Corrections for community corrections grants, Oregon Health Authority for specific grants, Oregon State Police for DUII enforcement, Arrest and Return Account, and Intoxicated Driver Program Fund. Lowers fines for traffic tickets. Directs distribution to each county the equivalent of \$5.00 per criminal action in that county for court facilities. Prohibits allocation for debt service obligations. Expresses legislative intent to make allocations consistent with historical funding. Directs any excess into General Fund.

Please note: Has Budget Report.

Please note: Has Revenue Impact Statement



SENATE BILLS:

**SB 101 C-Eng WM dpa PE 06/27/11 Freeman**

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All votes in committee, including joint committee have been unanimous in favor of bill. Passed senate with unanimous vote.

From Bill:

Authorizes premium assistance for children under the age of 19 years old enrolled in dental plans under the Family Health Insurance Assistance Program (FHIAP) and under employer-sponsored insurance plans through the Healthy Kids program.

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**Authorizes the Oregon Health Authority (OHA) to provide dental wraparound or dental premium coverage to underinsured or uninsured children enrolled in the Family Health Insurance Assistance Program (FHIAP) and the Healthy Kids Employer Sponsored Insurance (HK ESI) option of the Health Care for All Oregon Children program.** Directs OHA to proceed with obtaining the appropriate authorization to implement, on September 1, 2011, a new Medicaid fee schedule that is based upon the legislatively approved budget. Hospitals and fully capitated health plans (FCHPs) are required to maintain their existing contracts for inpatient/outpatient hospital services before September 1, 2011, unless there is a mutually agreed upon change to the contract. Under current practice, FCHPs do not pay contracted hospitals based on the Medicaid fee schedule. The amendment directs hospitals and FCHPs to work in good faith to negotiate a new contract in anticipation of the new Medicaid fee schedule on September 1, 2011. On or after September 1, 2011, binding arbitration may be used, if both parties

agree, when a FCHP does not have a contract with a hospital that provides 10 percent or more of hospital admissions and outpatient hospital services to plan enrollees. The binding arbitration must be completed no later than December 1, 2011. Where no contract exists between a hospital and FCHP, FCHP must pay the hospital based on the percentage of Medicare cost used by OHA in calculating the base hospital capitation payment to that plan. For hospitals where 10% or more of their admissions (both inpatient and outpatient) are enrollees of that FCHP, the FCHP's payments to the hospital can be equal to four percentages below that of the rate used by OHA. If the hospitals have less than 10% of their admissions from a FCHP's enrollees, that FCHP can only deduct 2% from the percentage of Medicare used by OHA. OHA must report to the Legislature no later than February 1, 2012 the results of contracting, under the terms of this amendment, between FCHPs and hospitals.

(Committee vote: 14-0)

Please note: Has Fiscal Impact Statement

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**SB 254 C-Eng** WM dpa PE 06/27/11 Dembrow

Directs the Department of Education to administer a grant program to provide grants related to accelerated college credit programs, and resolves statutory conflicts with House Bill 3106 which required school districts to give priority for participation in the Expanded Options Program to at-risk students if the school district has met the credit hour cap. (Committee vote: 14-0)

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Note:

From Summary: Appropriates \$250,000 out of General Fund for the Accelerated College Credit Account beginning July 1, 201. Excludes student test and examination fees as an allowable Accelerated College Credit Account expenditure, but provides for grant expenditures on classroom supplies in accelerated college credit programs.

Establishes grant program relating to accelerated college credit programs for college credit to be administered by the Department of Education (DOE). Directs Joint Boards of Education to develop statewide standards for dual credit programs and state secondary and tertiary schools to implement the standards and report on students enrolled in dual credit programs. Establishes the Accelerated College Credit Account (ACCA). Appropriates moneys from the General Fund to the ACCA. Continuously appropriates moneys in the ACCA to the Department of Education.

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Please note: Has Budget Report.

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**SB 412 C-Eng** RULES dpa PE 06/27/11 Roblan

**SB 412 B** Provides authorized tribal police officers with certain powers and protections provided to Oregon law enforcement officers.

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Note:

Passed senate with only 4 republicans supporting bill and one democrat opposed to bill.

The actual bill is very long and detailed. This is a bill for a police agency expert to review as I have heard good and bad things about bill from legislators and police officers. Ultimately bill allows tribal police to make arrests off of reservation land under certain circumstances.

Some of the worry about the bill came from potential/ perceived lower standards for tribal officers training and experience levels.

From bill summary: "Provides authorized tribal police officers with certain powers and protections provided to Oregon law enforcement officers. Creates transitional approach to grant of state law enforcement authority to tribal police officers. Provides for specific authority first two years, limited to three situations outside Indian Country (hot pursuit, commission of crime in officer's presence, and upon request or approval of law enforcement agency with jurisdiction), and unrestricted within Indian Country. Sunsets these provisions July 1, 2013."

In *State v. Kurtz*, S058346 (Or. 3-25-2011), 233 Or. App. 573 (2010), a defendant was found guilty of eluding and resisting arrest by a tribal law enforcement officer at the trial court level, but the convictions were overturned by the Oregon Court of Appeals. The Court of Appeals strictly applied both the statutory definitions of police and peace officer, which require that the officer's employing entity be a unit of Oregon government. Tribes, of course, are separate sovereigns and not explicitly included in either definition. Senate Bill 412-B took its cue from the Court of Appeals' decision, to address disparities in the scope of authority and the treatment of law enforcement officers beyond the two crimes that were the subject of the Kurtz opinion (eluding and resisting). While the measure was pending in the Legislature, the Oregon Supreme Court reversed the Court of Appeals, to treat similarly those persons entrusted by governments to serve in the same public safety capacity, but only for purposes of the two subject crimes (court decisions are usually limited to their distinct facts and specific issues). The Supreme Court's decision in Kurtz and Senate Bill 412-B are consistent with each other, but the measure goes further than Kurtz to address other potential areas of litigation, the most significant being the potential for tort liability.

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Grants authority to persons certified by Department of Public Safety Standards and Training (DPSST), whose employing tribal governments comply with insurance requirements, adopt policies regarding discovery in criminal cases in conformity with state law and neighboring jurisdictions, and codify the following in tribal law: waiver of sovereign immunity from tort liability; provisions governing records retention, public access to records, and preservation of biological evidence; and a deadly force plan. Creates process for nontribal law enforcement to apply to tribal government for authority to enforce state and tribal law on Indian country and requires report to legislature on number of incidents of potential exercise of such authority, if not granted. Creates transitional approach to grant of authority to tribal officers, limiting scope during first two years to three specific situations outside Indian country (hot pursuit, commission of crime in officer's presence, and upon request or approval of law enforcement agency with jurisdiction), and unrestricted in Indian country. Sunsets these provisions July 1, 2013. Provides full scope of authority the following two years, sunsetting July 1, 2015, then reverting to existing law. Defines Indian country. Prohibits receipt of public funds by tribal governments for law enforcement activities. Declares emergency, effective on passage. (Committee Vote: 7 - 0 - 1)

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**SB 817 A-Eng** TC dp 06/27/11 Wand

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Note:

Bill Create Oregon Low Income Community Jobs Initiative which creates a tax credit for qualified equity investments in low income community businesses. This bill is sponsored by both democrats and republicans and has Senator Morse and Telfer as co-sponsors. This is bad economic policy, and leads to waste of dollars and incorrect market signals for businesses in all areas where these credits are implemented, including neighboring businesses that DO NOT receive the credits. BAD, BAD, POLICY.

Note:

From bill statement: "the Oregon Low Income Community Jobs Initiative, which provides tax credits for investments in low-income communities" also takes a big chunk of cash from the taxpayer/ investor as "The taxpayer would pay an initial application fee of \$5,000 ( now \$20,000 after amendment) and an annual evaluation fee of \$1,000." Additionally the fiscal statement suggests this bill will require about 75k in lottery funds to make it run. This seems like bad policy as it requires investors to invest in certain locations to receive tax credits. Investment should be totally inside the free market, with no government interference, in order to provide correct market signals to businesses.

Creates the Oregon Low Income Community Jobs Initiative. Creates a tax credit against income and corporate excise taxes equal to 39 percent of the cost of a qualified equity investment. States that the credit is taken over seven years – no credit for the first two years, a seven percent credit in year three, and an eight percent credit in each of the subsequent four tax years. States that the credit is nonrefundable but may be carried forward to any tax year. Limits the total amount of tax credits that

may be claimed in any tax year to \$16 million. Specifies conditions that must be met for a taxpayer to be eligible for the credit and requires a nonrefundable application fee of \$20,000. Excludes businesses that receive more than 15 percent of their revenue from real estate. Limits the amount of qualified investments in a qualified business to \$4 million. Applies to qualified investments made between July 1, 2012 and June 30, 2016. (Committee Vote: Ayes, 7 - Bentz, Brewer, Gelser, Read, Wand, Bailey, Berger; Nays, 1 – Barnhart)

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Please note: Has Fiscal Impact Statement

Please note: Has Revenue Impact Statement

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(Requires Rule Suspension)

**SB 342 C-Eng** WM dpa PE 06/27/11 Jenson

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Note:

Appears to be result of ballot measure 76 which passed last election and requires 15% of monies to be used for specific purposes listed below.

Revises statutory provisions relating to lottery moneys constitutionally directed toward acquisition, management and protection of parks and recreation areas and toward financing restoration and protection of native fish and wildlife, watersheds and water quality.

From summary: **WHAT THE MEASURE DOES:** Establishes Parks Subaccount. Requires Director of Parks and Recreation Department to report to Joint Ways and Means Committee on measurable biennial and cumulative results of activities and programs financed by Parks Subaccount. Establishes Natural Resources Subaccount and purposes for which funds may be used. Directs 65 percent of money in Natural Resources Subaccount to be deposited in Watershed Conservation Grant Fund (Grant Fund) and 35 percent in Watershed Conservation Operating Fund (Operating Fund), except under specific circumstances. Establishes purpose of Grant Fund, including implementation of the Oregon Plan, and funding watershed health and native fish recovery costs. Directs each state agency receiving money from Natural Resources Subaccount to report to Legislative Assembly on use of funds, including measurable biennial and cumulative results of activities and programs financed by Natural Resources Subaccount.

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Declares emergency; effective upon passage. Eliminates the Research & Development account with interest on the Grant Fund and the Operating Fund now accruing to those funds. Keeps the old BM 66 accounts active until moneys in them can be expended under the rules of BM 66 so that these funds can be accounted for separately from new BM 76 monies as requested by the Sect of State for audit purposes. (Committee Vote: 14-0)

Please note: Has Fiscal Impact Statement