

B-Engrossed
House Bill 2779

Ordered by the House June 25
Including House Amendments dated May 4 and June 25

Sponsored by Representatives READ, BRUUN (at the request of Software Associates of Oregon)

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.

Establishes corporate income and excise tax credit for certain facility costs of business firms that construct facilities and engage in business operations in which average annual gross payroll and increase in number of employees meet specified requirements.

Requires interested firms to obtain certification from Economic and Community Development Department. Establishes business firm and biennial caps on amount of credit.

Authorizes Economic and Community Development Department to certify business firms on or after October 1, 2008, and on or before December 31, 2013.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tax credits for payroll costs; creating new provisions; amending ORS 314.752; and pre-
3 scribing an effective date.

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

5 **SECTION 1. Sections 2 to 6 of this 2007 Act are added to and made a part of ORS chapter**
6 **285C.**

7 **SECTION 2. As used in sections 2 to 6 of this 2007 Act:**

8 (1) "Annual full-time equivalent employment" means the number that results from di-
9 viding the total number of hours in a year for which any employed person receives pay by
10 2,080.

11 (2) "Annual gross payroll" means wages, salaries and other remuneration paid in a year
12 to persons employed by a business firm or licensed worker leasing company contracting with
13 the business firm to provide workers at the facility and payments in the year for workers
14 compensation, payroll taxes, pension or other retirement plan contributions, health or other
15 insurance premiums and other similar benefits for such persons employed by the business
16 firm, excluding executive officers or employees who own a five percent or greater share in
17 the business firm.

18 (3) "Business firm" has the meaning given that term in ORS 285C.050.

19 (4) "Certified business firm" means a business firm that has been certified under section
20 3 of this 2007 Act.

21 (5) "County per capita income" means the annual per capita personal income level pub-
22 lished by the Bureau of Economic Analysis of the United States Department of Commerce
23 for a county at the time a business firm is certified under section 3 of this 2007 Act.

24 (6) "Distressed area" has the meaning given the term in ORS 285A.010.

(7) "Facility" means the land, real property improvements and personal property that are

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 used by a business firm to conduct business operations and that are the subject of an appli-
2 cation for certification under section 3 of this 2007 Act.

3 **SECTION 3.** (1) A business firm seeking the income or corporate excise tax credit allowed
4 under section 10 of this 2007 Act shall apply to the Economic and Community Development
5 Department for certification under this section before the business firm:

6 (a) Commences construction, reconstruction, modification or installation of property or
7 improvements at the facility for which the credit is sought; and

8 (b) Hires employees to work at the facility for which the credit is sought.

9 (2) The application shall be on a form prescribed by the department and shall contain the
10 following information:

11 (a) The proposed location of the facility;

12 (b) A description of new or expanded business activities to be conducted at the facility
13 and the intended duration of such operations;

14 (c) A description of the property to be constructed, reconstructed, improved, modified,
15 installed, acquired, leased, used or occupied that will comprise the facility when the business
16 firm commences new or expanded business operations at the facility and, if the property is
17 to be leased, the term of the lease;

18 (d) For the 12 months preceding the application for certification, the average number of
19 full-time, year-round employees at the facility, annual gross payroll at the facility, annual
20 full-time equivalent employment at the facility and annual full-time equivalent employment
21 of the business firm elsewhere in this state;

22 (e) The intended number of full-time, year-round employees to be hired, average annual
23 gross payroll and annual full-time equivalent employment for the proposed new or expanded
24 operations at the facility;

25 (f) A description of any other business activities of the business firm in this state at the
26 time of application; and

27 (g) Any other information the department requires.

28 (3) An application filed under this section shall be accompanied by a fee in an amount
29 prescribed by the department. The fee required under this subsection may not exceed \$1,000.

30 (4) When an application is filed under this section, the department shall review the ap-
31 plication and determine whether:

32 (a) The facility proposed in the application directly benefits a traded sector industry, as
33 defined in ORS 285B.280;

34 (b) The facility proposed in the application will operate for at least 10 years from the date
35 the facility becomes operational or for at least 10 years from the date the certification is
36 issued, whichever is later;

37 (c) The business firm will hire at least five full-time, year-round employees to work at
38 the facility proposed in the application; and

39 (d) Average annual gross payroll at the facility proposed in the application will equal or
40 exceed 150 percent of the county per capita income.

41 (5) The Economic and Community Development Department shall issue a certification to
42 the business firm and furnish a copy to the Department of Revenue, if the Economic and
43 Community Development Department determines:

44 (a) The proposed facility satisfies the requirements for certification described in sub-
45 section (4) of this section if the proposed facility is completed and operated as described in

1 the application filed under this section;

2 (b) The business firm does not presently employ more than 500 employees at the facility
3 proposed in the application; and

4 (c) The proposed facility is not certified for a tax credit under ORS 317.124.

5 (6) The certification issued by the Economic and Community Development Department
6 pursuant to subsection (5) of this section shall specify:

7 (a) Whether the facility is located in a distressed area.

8 (b) The current county per capita income of the county in which the facility is located.

9 (c) The following information, as disclosed in the application as existing at the time of
10 application:

11 (A) The number of full-time, year-round employees at the facility;

12 (B) The annual gross payroll at the facility; and

13 (C) The annual full-time equivalent employment at the facility and the annual full-time
14 equivalent employment of the certified business firm elsewhere in this state.

15 (d) Any other information that the department deems appropriate.

16 (7) If the department determines that the facility proposed in the application does not
17 meet the requirements for certification described in subsection (4) of this section, the de-
18 partment may not issue a certification.

19 (8) A decision of the department to disapprove an application or to decline to issue a
20 certification under this section may be appealed in the same manner as a contested case
21 under ORS chapter 183. The failure of the department to issue a certification within 120 days
22 of the filing of the application is not appealable under this section if the failure to issue the
23 certification results from a limitation on the number of certifications permitted by law.

24 (9) The department must approve or disapprove an application under this section within
25 120 days of the date the application is filed.

26 **SECTION 4.** If a business firm is certified under section 3 of this 2007 Act and the facility
27 that is the subject of the application for certification filed under section 3 of this 2007 Act
28 is certified for a tax credit under ORS 317.124, the business firm no longer qualifies for cer-
29 tification for a tax credit under section 10 of this 2007 Act. The Economic and Community
30 Development Department shall revoke the certification issued under section 3 of this 2007
31 Act. The department shall issue a revocation of certification to the business firm and furnish
32 a copy of the revocation to the Department of Revenue.

33 **SECTION 5.** The Economic and Community Development Department may adopt rules
34 that the department considers necessary to administer sections 2 to 6 of this 2007 Act.

35 **SECTION 6.** The Economic and Community Development Department may not issue
36 more than 40 certifications under section 3 of this 2007 Act each biennium.

37 **SECTION 7.** The Economic and Community Development Department may issue certif-
38 ications under section 3 of this 2007 Act for applications received on or after October 1, 2008,
39 and on or before December 31, 2013.

40 **SECTION 8.** Sections 9 to 12 of this 2007 Act are added to and made a part of ORS
41 chapter 315.

42 **SECTION 9.** As used in sections 9 to 12 of this 2007 Act, “annual gross payroll,” “annual
43 full-time equivalent employment,” “business firm,” “certified business firm,” “county per
44 capita income,” “distressed area” and “facility” have the meanings given those terms in
45 section 2 of this 2007 Act.

1 **SECTION 10.** (1) A credit against taxes that are otherwise due under ORS chapter 316
2 or, if the taxpayer is a corporation, under ORS chapter 317 or 318, is allowed to a taxpayer
3 that is a certified business firm, if the business firm establishes that, in relation to the fa-
4 cility for which the business firm received certification and in relation to the information
5 established in the certification:

6 (a) The annual average number of full-time, year-round employees at the facility has in-
7 creased by five or more employees;

8 (b) The combined annual full-time equivalent employment at the facility and the com-
9 bined annual full-time equivalent employment of the certified business firm elsewhere in this
10 state has increased or stayed the same; and

11 (c) The increase in annual gross payroll at the facility divided by the change in annual
12 full-time equivalent employment at the facility is equal to or greater than 150 percent of the
13 county per capita income.

14 (2) The credit allowed under this section is based on the increase in the annual gross
15 payroll at the facility in the tax year relative to the facility's annual gross payroll at the time
16 of application for certification under section 3 of this 2007 Act, and shall equal:

17 (a) Three percent of the increase in annual gross payroll at the facility; or

18 (b) If the facility is located in a distressed area at the time of certification under section
19 3 of this 2007 Act, five percent of the increase in annual gross payroll at the facility.

20 (3) The credit allowed under this section may not exceed \$500,000 for any one tax year.

21 (4) The credit allowed under this section may be claimed for any of three successive tax
22 years, of which the first tax year begins on or before January 1 of the third calendar year
23 after the year in which the certification is issued under section 3 of this 2007 Act.

24 (5) A taxpayer seeking a credit under this section shall claim the credit on a form pre-
25 scribed by the Department of Revenue that contains for the tax year for which the credit is
26 claimed the annual average number of full-time, year-round employees at the facility, the
27 annual gross payroll at the facility, the full-time equivalent employment at the facility, the
28 full-time equivalent employment of the employer elsewhere in this state, and any other in-
29 formation required by the department.

30 (6)(a) A credit allowed under this section is not in lieu of any deduction for depreciation,
31 amortization, payroll costs or any other expense to which the taxpayer may be entitled.

32 (b) The taxpayer's adjusted basis for determining gain or loss may not be decreased by
33 any credit allowed under this section.

34 (c) A credit computed under this section for any tax year may not exceed the tax liability
35 of the taxpayer for the tax year.

36 (d) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or
37 if the department terminates the taxpayer's taxable year under ORS 314.440, the credit al-
38 lowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

39 (e)(A) A nonresident shall be allowed the credit computed under this section in the same
40 manner and subject to the same limitations as the credit allowed a resident of this state.
41 However, the credit shall be prorated using the proportion provided in ORS 316.117.

42 (B) If a change in the status of a taxpayer from resident to nonresident or from non-
43 resident to resident occurs, the credit allowed by this section shall be determined in a man-
44 ner consistent with ORS 316.117.

45 (7) Any tax credit otherwise allowable under this section that is not used by the taxpayer

1 in a particular tax year may be carried forward and offset against the taxpayer's tax liability
2 for the next succeeding tax year. Any credit remaining unused in the second succeeding tax
3 year may be carried forward and used in the third succeeding tax year. Any credit remaining
4 unused in the third succeeding tax year may be carried forward and used in the fourth suc-
5 ceeding tax year. Any credit remaining unused in the fourth succeeding tax year may be
6 carried forward and used in the fifth succeeding tax year, but may not be used in any tax
7 year thereafter.

8 **SECTION 11.** A business firm certified under section 3 of this 2007 Act may sell up to 50
9 percent of the tax credit allowed under section 10 of this 2007 Act to another taxpayer. The
10 sale is effective only if a notice of tax credit transfer is filed with the Department of Revenue
11 on or before the date on which the income or corporate excise tax return of the certified
12 business firm for the tax year in which the credit is to be claimed. The notice shall be filed
13 on a form prescribed by the department that includes:

- 14 (1) The name and taxpayer identification number of the certified business firm that is
15 selling the credit;
16 (2) The name and taxpayer identification number of the buyer;
17 (3) The amount of the tax credit that is being sold to the buyer;
18 (4) The amount of the tax credit that is being retained by the seller; and
19 (5) Any other information required by the department.

20 **SECTION 12.** (1) A taxpayer that has claimed a credit under section 10 of this 2007 Act
21 shall maintain records sufficient to show:

22 (a) That the facility for which a business firm received certification under section 3 of
23 this 2007 Act continued to operate with an annual average number of full-time, year-round
24 employees at the facility that exceeds the number established in the certification by no less
25 than five, for at least 10 years after the later of the date the facility became operational or
26 the date the Economic and Community Development Department issued the certification;
27 and

28 (b) That the facility has met the requirements for certification described in section 3 (4)
29 of this 2007 Act or the criteria for allowing or computing the credit under section 10 of this
30 2007 Act.

31 (2) The taxpayer shall provide the records required to be maintained under this section
32 to the Department of Revenue if requested to do so by the department.

33 (3) The taxpayer shall maintain the records described in this section for at least 10 years
34 following the last tax year for which the taxpayer claims any credit under section 10 of this
35 2007 Act. The parties to the transfer of a tax credit under section 11 of this 2007 Act must
36 arrange for the maintenance of the records.

37 (4) The department shall disallow the credit claimed under section 10 of this 2007 Act for
38 the current or any prior tax year and collect any taxes that were not paid as a result of
39 application of the credit, if:

40 (a) The facility for which the business firm received a certification under section 3 of this
41 2007 Act is discovered, in violation of subsection (1) of this section, to have closed or cur-
42 tailed operations or to have failed to meet a requirement for certification described in sec-
43 tion 3 (4) of this 2007 Act; or

44 (b) The certification is revoked under section 4 of this 2007 Act.

45 (5) For purposes of collecting taxes due under subsection (4) of this section, the depart-

1 **ment shall have the benefit of all laws of this state pertaining to the collection of income**
2 **and corporate excise taxes. No assessment of these taxes shall be necessary and no statute**
3 **of limitations shall preclude the collection of these taxes.**

4 **SECTION 13.** ORS 314.752 is amended to read:

5 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
6 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
7 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
8 allowable to the shareholders of the S corporation.

9 (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on
10 income of the shareholder of an S corporation, there shall be taken into account the shareholder's
11 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but
12 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-
13 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the
14 manner prescribed under section 1377(a) of the Internal Revenue Code.

15 (3) The character of any item included in a shareholder's pro rata share under subsection (2)
16 of this section shall be determined as if such item were realized directly from the source from which
17 realized by the corporation, or incurred in the same manner as incurred by the corporation.

18 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
19 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
20 316.117, then that provision shall apply to the nonresident shareholder.

21 (5) As used in this section, "business tax credit" means a tax credit granted to personal income
22 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive
23 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-
24 section as a business tax credit or is designated as a business tax credit by law or by the Depart-
25 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309
26 (tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS
27 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-pass devices, fishways), ORS
28 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care
29 assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS
30 315.254 (youth apprenticeship sponsorship), ORS 315.304 (pollution control facility), ORS 315.324
31 (plastics recycling), ORS 315.354 and ORS 469.207 (energy conservation facilities), ORS 315.507
32 (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone
33 marrow transplant expenses) and ORS 317.115 (fueling stations necessary to operate an alternative
34 fuel vehicle) **and section 10 of this 2007 Act (payroll increases).**

35 **SECTION 14.** This 2007 Act takes effect on the 91st day after the date on which the
36 regular session of the Seventy-fourth Legislative Assembly adjourns sine die.

37