

HOUSE AMENDMENTS TO HOUSE BILL 2779

By COMMITTEE ON WORKFORCE AND ECONOMIC DEVELOPMENT

May 4

1 On page 1 of the printed bill, delete lines 5 through 28 and delete pages 2 through 4.

2 On page 5, delete lines 1 through 31 and insert:

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

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

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

9 **“(2) ‘Annual gross payroll’ means wages, salaries and other remuneration paid to persons**
10 **employed by a business firm in annual full-time employment and workers compensation,**
11 **payroll taxes, pension or other retirement plan contributions, health or other insurance**
12 **premiums and other similar benefits for such persons employed by the business firm.**

13 **“(3) ‘Business firm’ has the meaning given that term in ORS 285C.050.**

14 **“(4) ‘Certified business firm’ means a business firm that has been certified under section**
15 **3 of this 2007 Act.**

16 **“(5) ‘County per capita income’ means the annual per capita personal income level pub-**
17 **lished by the Bureau of Economic Analysis of the United States Department of Commerce**
18 **for a county at the time a business firm is certified under section 3 of this 2007 Act.**

19 **“(6) ‘Distressed area’ has the meaning given the term in ORS 285A.010.**

20 **“(7) ‘Facility’ means the land, real property improvements and personal property that are**
21 **used by a business firm to conduct business operations and that are the subject of an appli-**
22 **cation for certification under section 3 of this 2007 Act.**

23 **“SECTION 3. (1) A business firm seeking the income or corporate excise tax credit al-**
24 **lowed under section 10 of this 2007 Act shall apply to the Economic and Community Devel-**
25 **opment Department for certification under this section before the business firm:**

26 **“(a) Commences construction, reconstruction, modification or installation of property or**
27 **improvements at the facility for which the credit is sought; and**

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

29 **“(2) The application shall be on a form prescribed by the department and shall contain**
30 **the following information:**

31 **“(a) The proposed location of the facility;**

32 **“(b) A description of new or expanded business activities to be conducted at the facility**
33 **and the intended duration of such operations;**

34 **“(c) A description of the property to be constructed, reconstructed, improved, modified,**
35 **installed, acquired, leased, used or occupied that will comprise the facility when the business**

1 firm commences new or expanded business operations at the facility and, if the property is
2 to be leased, the term of the lease;

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

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

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

12 “(g) Any other information the department requires.

13 “(3) An application filed under this section shall be accompanied by a fee in an amount
14 prescribed by the department. The fee required under this subsection may not exceed
15 \$_____.

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

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

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

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

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

27 “(5) The Economic and Community Development Department shall issue a certification
28 to the business firm and furnish a copy to the Department of Revenue, if the Economic and
29 Community Development Department determines:

30 “(a) The proposed facility is completed and operated as described in the application filed
31 under this section;

32 “(b) The facility as completed and operated satisfies the requirements for certification
33 described in subsection (4) of this section; and

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

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

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

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

39 “(c) The following information, as disclosed in the application as existing at the time of
40 application:

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

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

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

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

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

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

9 “(9) The department must approve or disapprove an application under this section within
10 120 days of the date the application is filed.

11 “SECTION 4. If a business firm is certified under section 3 of this 2007 Act and the fa-
12 cility that is the subject of the application for certification filed under section 3 of this 2007
13 Act is certified for a tax credit under ORS 317.124, the business firm no longer qualifies for
14 certification for a tax credit under section 10 of this 2007 Act. The Economic and Community
15 Development Department shall revoke the certification issued under section 3 of this 2007
16 Act. The department shall issue a revocation of certification to the business firm and furnish
17 a copy of the revocation to the Department of Revenue.

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

20 “SECTION 6. The Economic and Community Development Department may not issue
21 more than _____ certifications under section 3 of this 2007 Act each biennium. The de-
22 partment may approve an application for certification filed by a business firm for a facility
23 that is the subject of an application that was not approved due to the limitation imposed by
24 this section.

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

28 “SECTION 8. Sections 9 to 12 of this 2007 Act are added to and made a part of ORS
29 chapter 315.

30 “SECTION 9. As used in sections 9 to 12 of this 2007 Act, ‘annual gross payroll,’ ‘annual
31 full-time equivalent employment,’ ‘business firm,’ ‘certified business firm,’ ‘county per capita
32 income,’ ‘distressed area’ and ‘facility’ have the meanings given those terms in section 2 of
33 this 2007 Act.

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

39 “(a) The annual average number of full-time, year-round employees at the facility has
40 increased by five or more employees;

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

44 “(c) The increase in annual gross payroll at the facility divided by the change in annual
45 full-time equivalent employment at the facility is equal to or greater than 150 percent of the

1 county per capita income.

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

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

6 “(b) If the facility is located in a distressed area at the time of certification under section
7 3 of this 2007 Act, five percent of the increase in annual gross payroll at the facility.

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

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

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

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

20 “(b) The taxpayer’s adjusted basis for determining gain or loss may not be decreased by
21 any credit allowed under this section.

22 “(c) A credit computed under this section for any tax year may not exceed the qualified
23 tax liability of the taxpayer for the tax year.

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

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

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

33 “(7) Any tax credit otherwise allowable under this section that is not used by the tax-
34 payer in a particular tax year may be carried forward and offset against the taxpayer’s tax
35 liability for the next succeeding tax year. Any credit remaining unused in the second suc-
36 ceeding tax year may be carried forward and used in the third succeeding tax year. Any
37 credit remaining unused in the third succeeding tax year may be carried forward and used
38 in the fourth succeeding tax year. Any credit remaining unused in the fourth succeeding tax
39 year may be carried forward and used in the fifth succeeding tax year, but may not be used
40 in any tax year thereafter.

41 “SECTION 11. A business firm certified under section 3 of this 2007 Act may sell up to
42 _____ percent of the tax credit allowed under section 10 of this 2007 Act to another tax-
43 payer. The sale is effective only if a notice of tax credit transfer is filed with the Department
44 of Revenue on or before the date on which the income or corporate excise tax return of the
45 certified business firm for the tax year in which the credit is to be claimed. The notice shall

1 be filed on a form prescribed by the department that includes:

2 “(1) The name and taxpayer identification number of the certified business firm that is
3 selling the credit;

4 “(2) The name and taxpayer identification number of the buyer;

5 “(3) The amount of the tax credit that is being sold to the buyer;

6 “(4) The amount of the tax credit that is being retained by the seller; and

7 “(5) Any other information required by the department.

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

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

16 “(b) That the facility has met the requirements for certification described in section 3 (4)
17 of this 2007 Act or the criteria for allowing or computing the credit under section 10 of this
18 2007 Act.

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

21 “(3) The taxpayer shall maintain the records described in this section for at least 10 years
22 following the last tax year for which the taxpayer claims any credit under section 10 of this
23 2007 Act. The parties to the transfer of a tax credit under section 11 of this 2007 Act must
24 arrange for the maintenance of the records.

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

28 “(a) The facility for which the business firm received a certification under section 3 of
29 this 2007 Act is discovered, in violation of subsection (1) of this section, to have closed or
30 curtailed operations or to have failed to meet a requirement for certification described in
31 section 3 (4) of this 2007 Act; or

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

33 “(5) For purposes of collecting taxes due under subsection (4) of this section, the de-
34 partment shall have the benefit of all laws of this state pertaining to the collection of income
35 and corporate excise taxes. No assessment of these taxes shall be necessary and no statute
36 of limitations shall preclude the collection of these taxes.”.

37 In line 32, delete “12” and insert “13”.

38 On page 6, line 17, delete “9” and insert “10” and delete “(human resources intensive
39 businesses)” and insert “(payroll increases)”.

40 In line 18, delete “13” and insert “14”.