

House Bill 2779

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 **as introduced**.

Establishes corporate income and excise tax credit for certain payroll costs of business firms that construct facilities and engage in business operations in which personnel and human resources signify primary assets of operation. 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 before June 30, 2011.

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 7 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 7 of this 2007 Act:**

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

9 (2) "Certified business firm" means a business firm that has been certified under section
10 3 of this 2007 Act.

11 (3) "Facility" means land, real property improvements and personal property used in
12 business operations that are the subject of an application for certification made under sec-
13 tion 3 of this 2007 Act.

14 (4) "In service" has the meaning given that term in ORS 285C.050.

15 (5) "Payroll costs" means the sum of:

16 (a) Employee salaries, wages and other remuneration paid in cash or property; and

17 (b) Premium payments for workers' compensation, health, life or other insurance, payroll
18 taxes, contributions to pension or other retirement plans and payments for other employee
19 benefits.

20 **SECTION 3. (1)(a) Any business firm that seeks to claim the tax credit provided under**
21 **section 9 of this 2007 Act shall, before commencing any construction, installation or acqui-**
22 **sition of property or improvements that comprise a facility for new or expanded operations**
23 **in this state, apply for certification with the Economic and Community Development De-**
24 **partment on a form prescribed by the department.**

25 (b) A business firm may submit one application under this section to seek certification
26 for more than one facility operated by the business firm.

27 (2) The business firm's application with the department shall:

28 (a) Describe the proposed business operations at the facility for which the application is

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 being made, including but not limited to the estimated cost or value of property and im-
 2 provements to be invested and the expected timing for starting and completing the invest-
 3 ment;

4 (b) Establish the annual payroll costs attributable to employment at the facility for the
 5 most recent tax year of the firm ending prior to the date of application;

6 (c) Demonstrate the net effect on the firm's employment in this state as a result of the
 7 investment in the proposed facility;

8 (d) Project the new hiring and increases in employment and payroll at the facility that
 9 are expected to occur at the facility within three years after the facility is placed in service;

10 (e) Commit the firm to undertake such other actions or efforts with respect to the fa-
 11 cility as the firm and the department agree to formally incorporate into the application; and

12 (f) Provide any other information considered necessary by the department.

13 (3) The department shall collect an application fee of \$5,000 from a business firm applying
 14 for certification under this section. The fees collected under this subsection shall be depos-
 15 ited in the Oregon Community Development Fund created by ORS 285A.227.

16 (4) The department shall certify a business firm that is in compliance with subsections
 17 (1) to (3) of this section if each of the following is satisfied:

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

20 (b) The ratio of the estimated annual sum of payroll costs and related employee devel-
 21 opment and human resources costs to the amount invested in capital assets signifies busi-
 22 ness operations with a low dependence on long-lived plant facilities and equipment.

23 (c) Other attributes of the proposed facility and operations demonstrate that:

24 (A) The competitive success of the operations is primarily predicated on the human
 25 capital embodied in the employees of the business firm;

26 (B) There exists significant potential for substantial personal income tax revenue in as-
 27 sociation with new employment at the proposed facility; and

28 (C) Other tax abatements under state law would offer little in the way of benefit or in-
 29 ducement for the proposed facility relative to investments with comparable employment size.

30 (d) The proposed facility meets any other criteria that the department may prescribe by
 31 rule.

32 (5) In determining whether to certify a business firm under this section, the department
 33 shall give priority to proposed facility investments that would:

34 (a) Further public policy objectives under ORS 285B.280 to 285B.286;

35 (b) Contribute to a geographic distribution of the facilities across this state;

36 (c) Provide an immediate and sizable increase in payroll; or

37 (d) Present a unique opportunity to advance the ability of this state's economy to grow
 38 by effectively taking advantage of post-secondary education, innovation or knowledge-based
 39 entrepreneurship.

40 (6) If the department determines to certify a business firm under this section, the de-
 41 partment shall prepare a written certification. The written certification shall specify the lo-
 42 cation of each facility to which the certification applies and a certification amount. The
 43 certification amount:

44 (a) Shall be 10 percent of the applicant's average annual payroll costs that are attribut-
 45 able to employment at the facility, reduced by existing annual payroll costs, as established

1 by the department based on data contained in the application for certification and other in-
 2 formation that the department may request or obtain;

3 (b) May not exceed \$2 million; and

4 (c) May be reduced to an amount that is less than the amount that is determined under
 5 paragraphs (a) and (b) of this subsection:

6 (A) Under rules adopted by the department to implement and administer the priorities
 7 set forth in subsection (5) of this section; or

8 (B) In order to comply with the biennial cap described in section 4 (1) of this 2007 Act.

9 (7) The department shall provide written notice to the applicant and shall refund the
 10 application fee whenever the department denies certification under this section. A denial of
 11 certification may not be appealed.

12 **SECTION 4.** (1) The Economic and Community Development Department may not certify
 13 a business firm under section 3 of this 2007 Act if the certification amount, when added to
 14 the certification amounts specified for all other certified business firms during the same
 15 biennium, exceeds \$20 million.

16 (2) The Economic and Community Development Department shall provide copies of the
 17 written certification to the certified business firm and to the Department of Revenue, which
 18 shall also be furnished with a copy of the application.

19 (3) Certification under section 3 of this 2007 Act allows the business firm to claim the tax
 20 credit under section 9 of this 2007 Act, provided that the certification is issued:

21 (a) Before the facility is placed in service; and

22 (b) On or before June 30, 2011.

23 (4) Certification under section 3 of this 2007 Act is granted for a period of five years,
 24 beginning with the first tax year of the certified business firm that commences directly after
 25 the date of certification. Certification expires following the end of the tax year that is four
 26 tax years after the tax year that commenced directly after the date of certification.

27 **SECTION 5.** Notwithstanding ORS 192.410 to 192.505 or other law governing the disclosure
 28 of information, the identity of a business firm applying for certification under section 3 of
 29 this 2007 Act, the application form as submitted to the Economic and Community Develop-
 30 ment Department, other associated information about proposed investments described in the
 31 application and information about negotiations between the applicant and the state or other
 32 public officials are exempt from public disclosure.

33 **SECTION 6.** (1) In accordance with procedures for a contested case under ORS chapter
 34 183, the Director of the Economic and Community Development Department may order the
 35 revocation of a certification issued under section 3 of this 2007 Act if the director finds that:

36 (a) The certification was obtained by fraud or misrepresentation; or

37 (b) As compared with the plans, descriptions and commitments in the application under
 38 section 3 of this 2007 Act, the certified business firm has substantially failed to:

39 (A) Construct the facility or make every reasonable effort to place it in service;

40 (B) Hire or compensate new employees at the facility;

41 (C) Take certain material actions that the firm stated it would take in the firm's appli-
 42 cation for certification; or

43 (D) Otherwise engage in business operations as anticipated.

44 (2) As soon as the order of revocation under this section becomes final, the director shall
 45 notify the Department of Revenue of the order.

1 **SECTION 7.** (1) The Economic and Community Development Department shall submit to
 2 the Legislative Assembly a written biennial report regarding the activity and economic im-
 3 pact of the operations of certified business firms, including but not limited to descriptions
 4 of facilities, the status of facility construction and installation projects and public informa-
 5 tion about applications for certification that were denied.

6 (2) The department may adopt any rules that the department considers necessary to ad-
 7 minister sections 2 to 7 of this 2007 Act.

8 **SECTION 8.** Sections 9 to 11 of this 2007 Act are added to and made part of ORS chapter
 9 315.

10 **SECTION 9.** (1) A taxpayer that is a certified business firm and that owns or leases a
 11 facility associated with a certification under section 3 of this 2007 Act may claim a tax credit
 12 under this section against the taxes that are otherwise due under ORS chapter 316 or, if the
 13 taxpayer is a corporation, under ORS chapter 317 or 318.

14 (2) Except as provided in subsection (9) of this section, the credit may be claimed in a
 15 single tax year elected by the taxpayer that begins after the facility is placed in service,
 16 provided that certification is not otherwise expired or revoked under section 4 or 6 of this
 17 2007 Act.

18 (3) The amount of the credit claimed in a tax year shall equal the lesser of the following:

19 (a) The certification amount set forth in the certification issued under section 3 of this
 20 2007 Act; or

21 (b) Ten percent of the payroll costs of the taxpayer for that tax year that are attributable
 22 to employment at the facility, minus the existing annual payroll costs established in the ap-
 23 plication for certification.

24 (4) The credit is not allowed for the payroll costs of any facility that is also approved by
 25 the Governor for a tax credit under ORS 317.124.

26 (5) The credit shall be claimed on a form prescribed by the Department of Revenue that
 27 contains information required by the department.

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

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

32 (8) A credit computed under this section for any tax year may not exceed the qualified
 33 tax liability of the taxpayer for the tax year as determined under section 10 of this 2007 Act.

34 (9) Any credit otherwise allowable under this section that is not used by the taxpayer in
 35 a particular tax year may be carried forward and offset against the taxpayer's qualified tax
 36 liability for the next succeeding tax year. Any credit remaining unused in the next succeed-
 37 ing tax year may be carried forward and used against the taxpayer's qualified tax liability for
 38 the second succeeding tax year. Any credit remaining unused in the second succeeding tax
 39 year may be carried forward and used against the taxpayer's qualified tax liability for the
 40 third succeeding tax year. Any credit remaining unused in the third succeeding tax year may
 41 be carried forward and used against the taxpayer's qualified tax liability for the fourth suc-
 42 ceeding tax year. Any credit remaining unused in the fourth succeeding tax year may be
 43 carried forward and used against the taxpayer's qualified tax liability for the fifth succeeding
 44 tax year, but may not be used in any tax year thereafter.

45 (10) As used in this section, "certified business firm," "facility," "in service" and "payroll

1 costs” have the meanings given those terms in section 2 of this 2007 Act.

2 **SECTION 10.** (1) The credit computed under section 9 of this 2007 Act may be offset only
3 against the qualified tax liability of the taxpayer, as determined under this section.

4 (2) The qualified tax liability of the taxpayer is the amount determined by subtracting the
5 tax credit threshold amount from the tax liability of the taxpayer under ORS chapter 316,
6 317 or 318 for the tax year. For purposes of this section, the tax liability of the taxpayer shall
7 be determined prior to the application of any credit against the taxes imposed by ORS
8 chapter 316, 317 or 318 that the taxpayer may otherwise claim.

9 (3) The tax credit threshold amount equals five percent of the certification amount, as
10 set forth in the certification issued under section 3 of this 2007 Act.

11 (4) Notwithstanding any other provision of law creating a tax credit against personal in-
12 come taxes or corporate excise or income taxes, a taxpayer claiming a tax credit under
13 section 9 of this 2007 Act may not claim any type of tax credit otherwise authorized by law
14 against that portion of taxes due under ORS chapter 316, 317 or 318 that equals the certif-
15 ication amount for the tax year.

16 (5)(a) In determining the tax imposed under ORS chapter 316 on the income of a partner
17 or S corporation shareholder of a certified business firm, the tax credit threshold amount
18 shall be distributed:

19 (A) To a partner, in the same way that a tax credit is distributed to the partner; or

20 (B) To a shareholder, on a pro rata basis according to the number of shares owned by
21 the shareholder.

22 (b) A certified business firm that is a partnership or S corporation shall report the cer-
23 tification and tax credit threshold amounts to the firm’s partners or shareholders.

24 **SECTION 11.** If a certification issued under section 3 of this 2007 Act is revoked by the
25 Director of the Economic and Community Development Department under section 6 of this
26 2007 Act:

27 (1) A tax credit under section 9 of this 2007 Act may not be allowed; and

28 (2) The Department of Revenue immediately shall collect any taxes due by reason of the
29 revocation and shall have the benefit of all laws of this state pertaining to the collection of
30 income and excise taxes. No assessment of the taxes shall be necessary and no statute of
31 limitations shall preclude the collection of the taxes.

32 **SECTION 12.** ORS 314.752 is amended to read:

33 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
34 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
35 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
36 allowable to the shareholders of the S corporation.

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

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

1 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
 2 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
 3 316.117, then that provision shall apply to the nonresident shareholder.

4 (5) As used in this section, "business tax credit" means a tax credit granted to personal income
 5 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive
 6 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-
 7 section as a business tax credit or is designated as a business tax credit by law or by the Depart-
 8 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309
 9 (tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS
 10 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-pass devices, fishways), ORS
 11 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care
 12 assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS
 13 315.254 (youth apprenticeship sponsorship), ORS 315.304 (pollution control facility), ORS 315.324
 14 (plastics recycling), ORS 315.354 and ORS 469.207 (energy conservation facilities), ORS 315.507
 15 (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone
 16 marrow transplant expenses) and ORS 317.115 (fueling stations necessary to operate an alternative
 17 fuel vehicle) **and section 9 of this 2007 Act (human resources intensive businesses).**

18 **SECTION 13. This 2007 Act takes effect on the 91st day after the date on which the**
 19 **regular session of the Seventy-fourth Legislative Assembly adjourns sine die.**

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