

SENATE AMENDMENTS TO RESOLVE CONFLICTS TO A-ENGROSSED HOUSE BILL 2065

By COMMITTEE ON FINANCE AND REVENUE

March 13

1 On page 21 of the printed A-engrossed bill, after line 38, insert:

2 **“SECTION 25a. If House Bill 2157 becomes law, section 25 of this 2009 Act (amending ORS**
3 **317.097) is repealed and ORS 317.097, as amended by section 6, chapter 29, Oregon Laws 2008,**
4 **section 15, chapter 45, Oregon Laws 2008, and section 25, chapter _____, Oregon Laws 2009**
5 **(Enrolled House Bill 2157), is amended to read:**

6 “317.097. (1) A credit against taxes otherwise due under this chapter for the taxable year shall
7 be allowed to a lending institution in an amount equal to the difference between:

8 “(a) The amount of finance charge charged by the lending institution during the taxable year
9 at an annual rate less than the market rate for a loan that is made before January 1, 2020, that
10 complies with the requirements of this section; and

11 “(b) The amount of finance charge that would have been charged during the taxable year by the
12 lending institution for the loan for housing construction, development, acquisition or rehabilitation
13 measured at the annual rate charged by the lending institution for nonsubsidized loans made under
14 like terms and conditions at the time the loan for housing construction, development, acquisition or
15 rehabilitation is made.

16 “(2) The maximum amount of credit for the difference between the amounts described in sub-
17 section (1)(a) and (b) of this section may not exceed four percent of the average unpaid balance of
18 the loan during the tax year for which the credit is claimed.

19 “(3) Any tax credit otherwise allowable under this section that is not used by the taxpayer in
20 a particular year may be carried forward and offset against the taxpayer’s tax liability for the next
21 succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried
22 forward and used in the second succeeding tax year, and likewise, any credit not used in that second
23 succeeding tax year may be carried forward and used in the third succeeding tax year, and any
24 credit not used in that third succeeding tax year may be carried forward and used in the fourth
25 succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried
26 forward and used in the fifth succeeding tax year, but may not be carried forward for any tax year
27 thereafter.

28 “(4) In order to be eligible for the tax credit allowed under subsection (1) of this section, the
29 loan shall be:

30 “(a) Made to an individual or individuals who own the dwelling, participate in an owner-
31 occupied community rehabilitation program and are certified by the local government or its desig-
32 nated agent as having an income level at the time the loan is made of less than 80 percent of the
33 area median income;

34 “(b)(A) Made to a qualified borrower;

35 “(B) Used to finance construction, development, acquisition or rehabilitation of housing; and

1 “(C) Accompanied by a written certification by the Housing and Community Services Depart-
2 ment that the:

3 “(i) Housing created by the loan is or will be occupied by households earning less than 80 per-
4 cent of the area median income; and

5 “(ii) Full amount of savings from the reduced interest rate provided by the lending institution
6 is or will be passed on to the tenants in the form of reduced housing payments, regardless of other
7 subsidies provided to the housing project;

8 “(c)(A) Made to a qualified borrower;

9 “(B) Used to finance construction, development, acquisition, or acquisition and rehabilitation of
10 housing consisting of a manufactured dwelling park; and

11 “(C) Accompanied by a written certification by the Housing and Community Services Depart-
12 ment that the housing will continue to be operated as a manufactured dwelling park during the pe-
13 riod for which the tax credit is allowed; or

14 “(d)(A) Made to a qualified borrower;

15 “(B) Used to finance acquisition, or acquisition and rehabilitation, of housing consisting of a
16 preservation project; and

17 “(C) Accompanied by a written certification by the Housing and Community Services Depart-
18 ment that the housing preserved by the loan:

19 “(i) Is or will be occupied by households earning less than 80 percent of the area median income;
20 and

21 “(ii) Has a rent assistance contract with the United States Department of Housing and Urban
22 Development or the United States Department of Agriculture that will be maintained by the quali-
23 fied borrower.

24 “(5) A loan made to refinance a loan that meets the criteria stated in subsection (4) of this
25 section shall be treated the same as a loan that meets the criteria stated in subsection (4) of this
26 section.

27 “(6) In order to be eligible for the tax credit allowed under subsection (1) of this section, the
28 loan also shall be accompanied by a written certification by the Housing and Community Services
29 Department that:

30 “(a) Specifies the period, as determined by the Housing and Community Services Department,
31 during which the loan is eligible for the tax credit under subsection (1) of this section; and

32 “(b) States that the loan is within the limitation imposed by subsection (7) of this section.

33 “(7)(a) The Housing and Community Services Department may certify loans that are eligible
34 under subsection (4) of this section if the total credits attributable to all loans eligible for credits
35 under subsection (1) of this section and then outstanding do not exceed \$17 million for any fiscal
36 year. In making loan certifications, the Housing and Community Services Department shall attempt
37 to distribute the tax credits statewide, but shall concentrate the tax credits in those areas of the
38 state that are determined by the State Housing Council to have the greatest need for affordable
39 housing.

40 “(b) The certification under subsection (6) of this section shall state the period for which the
41 credit will be allowed, which may not exceed 20 years.

42 “(8) The applicant’s receipt of a credit under section 42 of the Internal Revenue Code does not
43 affect the credit allowed under this section.

44 “(9) A loan meeting the requirements of subsections (4) and (6) of this section may be sold to a
45 qualified assignee with or without the lending institution’s retaining servicing of the loan so long

1 as a designated lending institution maintains records annually verified by a loan servicer that es-
2 tablish the amount of tax credit earned by the taxpayer throughout each year of eligibility.

3 “[(10) As used in this section:]

4 “[(a) ‘Annual rate’ means the yearly interest rate specified on the note, and not the annual per-
5 centage rate, if any, disclosed to the applicant to comply with the federal Truth in Lending Act.]

6 “[(b) ‘Finance charge’ means the total of all interest, loan fees, interest on any loan fees financed
7 by the lending institution, and other charges related to the cost of obtaining credit.]

8 “[(c) ‘Lending institution’ means any insured institution, as that term is defined in ORS 706.008,
9 any mortgage banking company that maintains an office in this state or any community development
10 corporation that is organized under the Oregon Nonprofit Corporation Law.]

11 “[(d) ‘Manufactured dwelling park’ has the meaning given that term in ORS 446.003.]

12 “[(e) ‘Nonprofit corporation’ means a corporation that is exempt from income taxes under section
13 501(c)(3) or (4) of the Internal Revenue Code as amended and in effect on December 31, 2008.]

14 “[(f) ‘Preservation project’ means housing that was previously developed as affordable housing with
15 a contract for rent assistance from the United States Department of Housing and Urban Development
16 or the United States Department of Agriculture and that is being acquired by a sponsoring entity.]

17 “[(g) ‘Qualified assignee’ means any investor participating in the secondary market for real estate
18 loans.]

19 “[(h) ‘Qualified borrower’ means any borrower that is a sponsoring entity that has a controlling
20 interest in the real property that is financed by the loan described in subsection (4) of this section. Such
21 a controlling interest includes, but is not limited to, a controlling interest in the general partner of a
22 limited partnership that owns the real property.]

23 “[(i) ‘Sponsoring entity’ means a nonprofit corporation, nonprofit cooperative, state governmental
24 entity, local unit of government as defined in ORS 466.706, housing authority or any other person,
25 provided that the person has agreed to restrictive covenants imposed by a nonprofit corporation,
26 nonprofit cooperative, state governmental entity, local unit of government or housing authority.]

27 “[(11)] (10) Notwithstanding any other provision of law, a lending institution that is a community
28 development corporation organized under the Oregon Nonprofit Corporation Law may transfer any
29 part or all of any tax credit arising under subsection (1) of this section to one or more other lending
30 institutions that are stockholders or members of the community development corporation or that
31 otherwise participate through the community development corporation in the making of one or more
32 loans that generate the tax credit under subsection (1) of this section.

33 “[(12)] (11) The lending institution shall file an annual statement with the Housing and Com-
34 munity Services Department, specifying that it has conformed with all requirements imposed by law
35 to qualify for this tax credit.

36 “[(13)] (12) The Housing and Community Services Department and the Department of Revenue
37 may adopt rules to carry out the provisions of this section.

38 “(13) As used in this section:

39 “(a) ‘Annual rate’ means the yearly interest rate specified on the note, and not the an-
40 nual percentage rate, if any, disclosed to the applicant to comply with the federal Truth in
41 Lending Act.

42 “(b) ‘Finance charge’ means the total of all interest, loan fees, interest on any loan fees
43 financed by the lending institution, and other charges related to the cost of obtaining credit.

44 “(c) ‘Lending institution’ means any insured institution, as that term is defined in ORS
45 706.008, any mortgage banking company that maintains an office in this state or any com-

1 **munity development corporation that is organized under the Oregon Nonprofit Corporation**
2 **Law.**

3 **“(d) ‘Manufactured dwelling park’ has the meaning given that term in ORS 446.003.**

4 **“(e) ‘Nonprofit corporation’ means a corporation that is exempt from income taxes under**
5 **section 501(c)(3) or (4) of the Internal Revenue Code as amended and in effect on December**
6 **31, 2008.**

7 **“(f) ‘Preservation project’ means housing that was previously developed as affordable**
8 **housing with a contract for rent assistance from the United States Department of Housing**
9 **and Urban Development or the United States Department of Agriculture and that is being**
10 **acquired by a sponsoring entity.**

11 **“(g) ‘Qualified assignee’ means any investor participating in the secondary market for**
12 **real estate loans.**

13 **“(h) ‘Qualified borrower’ means any borrower that is a sponsoring entity that has a**
14 **controlling interest in the real property that is financed by the loan described in subsection**
15 **(4) of this section. Such a controlling interest includes, but is not limited to, a controlling**
16 **interest in the general partner of a limited partnership that owns the real property.**

17 **“(i) ‘Sponsoring entity’ means a nonprofit corporation, nonprofit cooperative, state gov-**
18 **ernmental entity, local unit of government as defined in ORS 466.706, housing authority or**
19 **any other person, provided that the person has agreed to restrictive covenants imposed by**
20 **a nonprofit corporation, nonprofit cooperative, state governmental entity, local unit of gov-**
21 **ernment or housing authority.**

22 **“NOTE: Makes section definitions easier to find; resolves conflict with House Bill 2157.”.**
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