

House Bill 2153

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor John A. Kitzhaber for Housing and Community Services Department)

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 Oregon Affordable Housing Trust Fund. Deposits contributions into fund. Continuously appropriates moneys in fund to Housing and Community Services Department for purposes of development, preservation or operation of affordable housing. Allows lending institutions that have received certification for tax credit for qualified housing loans to relinquish unclaimed credit.

Creates tax credit for monetary contributions to Oregon Affordable Housing Trust Fund. Includes amount of contributions in calculation of maximum amount of credit allowed for affordable housing.

Applies to contributions received after effective date of Act and to tax years beginning on or after January 1, 2011.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to affordable housing tax credits; creating new provisions; amending ORS 317.097 and sec-
3 tion 30, chapter 913, Oregon Laws 2009; appropriating money; and prescribing an effective date.

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

5 **SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS chapter 456.**

6 **SECTION 2. (1) The Oregon Affordable Housing Trust Fund is established in the State**
7 **Treasury, separate and distinct from the General Fund. Interest earned by the Oregon Af-**
8 **fordable Housing Trust Fund shall be credited to the fund. Moneys in the fund are contin-**
9 **uously appropriated to the Housing and Community Services Department for use consistent**
10 **with the purposes of the fund.**

11 **(2) The fund shall consist of the contributions received by the department under section**
12 **5 of this 2011 Act and moneys deposited in the fund by the department from other sources.**

13 **(3) Moneys in the fund may be expended or otherwise used by the department for the**
14 **development, preservation or operation of residential housing as determined by the depart-**
15 **ment to be prudent and appropriate, including but not limited to the making of loans, grants,**
16 **loan guarantees and other credit enhancements to the developers and sponsors of residential**
17 **housing to achieve the purposes identified in this section.**

18 **(4) The department shall expend or otherwise use fund moneys pursuant to this section**
19 **to benefit very low income, low income and moderate income residential housing tenant**
20 **households.**

21 **(5) The department may condition access to fund moneys upon the execution and re-**
22 **recording of appropriate documents, the payment of fees, interest and other charges identified**
23 **by the department, the contribution of appropriate matching funds, particularly nongovern-**
24 **mental matching funds, to residential housing projects for which fund moneys will be used,**
25 **and upon such other criteria as the department may determine to be necessary or appro-**
26 **priate.**

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 **(6) The department may expend up to two percent of the fund corpus in any fiscal year**
 2 **to market and otherwise promote the purposes of the fund.**

3 **(7) The department may adopt rules to carry out the provisions of this section.**

4 **SECTION 3.** ORS 317.097, as amended by section 30, chapter 82, Oregon Laws 2010, is amended
 5 to read:

6 317.097. (1) As used in this section:

7 (a) “Annual rate” means the yearly interest rate specified on the note, and not the annual per-
 8 centage rate, if any, disclosed to the applicant to comply with the federal Truth in Lending Act.

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

11 (c) “Lending institution” means any insured institution, as that term is defined in ORS 706.008,
 12 any mortgage banking company that maintains an office in this state or any community development
 13 corporation that is organized under the Oregon Nonprofit Corporation Law.

14 (d) “Manufactured dwelling park” has the meaning given that term in ORS 446.003.

15 (e) “Nonprofit corporation” means a corporation that is exempt from income taxes under section
 16 501(c)(3) or (4) of the Internal Revenue Code as amended and in effect on December 31, 2009.

17 (f) “Preservation project” means housing that was previously developed as affordable housing
 18 with a contract for rent assistance from the United States Department of Housing and Urban De-
 19 velopment or the United States Department of Agriculture and that is being acquired by a spon-
 20 soring entity.

21 (g) “Qualified assignee” means any investor participating in the secondary market for real estate
 22 loans.

23 (h) “Qualified borrower” means any borrower that is a sponsoring entity that has a controlling
 24 interest in the real property that is financed by a qualified loan. A controlling interest includes, but
 25 is not limited to, a controlling interest in the general partner of a limited partnership that owns the
 26 real property.

27 (i) “Qualified loan” means:

28 (A) A loan that meets the criteria stated in subsection (5) of this section or that is made to re-
 29 finance a loan that meets the criteria described in subsection (5) of this section; or

30 (B) The purchase by a lending institution of bonds, as defined in ORS 286A.001, issued on behalf
 31 of the Housing and Community Services Department, the proceeds of which are used to finance or
 32 refinance a loan that meets the criteria described in subsection (5) of this section.

33 (j) “Sponsoring entity” means a nonprofit corporation, nonprofit cooperative, state governmental
 34 entity, local unit of government as defined in ORS 466.706, housing authority or any other person,
 35 provided that the person has agreed to restrictive covenants imposed by a nonprofit corporation,
 36 nonprofit cooperative, state governmental entity, local unit of government or housing authority.

37 (2) The Department of Revenue shall allow a credit against taxes otherwise due under this
 38 chapter for the taxable year to a lending institution that makes a qualified loan certified by the
 39 Housing and Community Services Department as provided in subsection (7) of this section. The
 40 amount of the credit is equal to the difference between:

41 (a) The amount of finance charge charged by the lending institution during the taxable year at
 42 an annual rate less than the market rate for a qualified loan that is made before January 1, 2014,
 43 that complies with the requirements of this section; and

44 (b) The amount of finance charge that would have been charged during the taxable year by the
 45 lending institution for the qualified loan for housing construction, development, acquisition or re-

1 habilitation measured at the annual rate charged by the lending institution for nonsubsidized loans
 2 made under like terms and conditions at the time the qualified loan for housing construction, de-
 3 velopment, acquisition or rehabilitation is made.

4 (3) The maximum amount of credit for the difference between the amounts described in sub-
 5 section (2)(a) and (b) of this section may not exceed four percent of the average unpaid balance of
 6 the qualified loan during the tax year for which the credit is claimed.

7 (4) Any tax credit allowed under this section that is not used by the taxpayer in a particular
 8 year may be carried forward and offset against the taxpayer's tax liability for the next succeeding
 9 tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and
 10 used in the second succeeding tax year, and likewise, any credit not used in that second succeeding
 11 tax year may be carried forward and used in the third succeeding tax year, and any credit not used
 12 in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year,
 13 and any credit not used in that fourth succeeding tax year may be carried forward and used in the
 14 fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

15 (5) To be eligible for the tax credit allowable under this section, a lending institution must make
 16 a qualified loan by either purchasing bonds, as defined in ORS 286A.001, issued on behalf of the
 17 Housing and Community Services Department, the proceeds of which are used to finance or refi-
 18 nance a loan that meets the criteria stated in this subsection, or by making a loan directly to:

19 (a) An individual or individuals who own a dwelling, participate in an owner-occupied commu-
 20 nity rehabilitation program and are certified by the local government or its designated agent as
 21 having an income level when the loan is made of less than 80 percent of the area median income;

22 (b) A qualified borrower who:

23 (A) Uses the loan proceeds to finance construction, development, acquisition or rehabilitation
 24 of housing; and

25 (B) Provides a written certification executed by the Housing and Community Services Depart-
 26 ment that the:

27 (i) Housing created by the loan is or will be occupied by households earning less than 80 percent
 28 of the area median income; and

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

32 (c) Subject to subsection [(14)] (15) of this section, a qualified borrower who:

33 (A) Uses the loan proceeds to finance construction, development, acquisition or rehabilitation
 34 of housing consisting of a manufactured dwelling park; and

35 (B) Provides a written certification executed by the Housing and Community Services Depart-
 36 ment that the housing will continue to be operated as a manufactured dwelling park during the pe-
 37 riod for which the tax credit is allowed; or

38 (d) A qualified borrower who:

39 (A) Uses the loan proceeds to finance acquisition or rehabilitation of housing consisting of a
 40 preservation project; and

41 (B) Provides a written certification executed by the Housing and Community Services Depart-
 42 ment that the housing preserved by the loan:

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

45 (ii) Is the subject of a rent assistance contract with the United States Department of Housing

1 and Urban Development or the United States Department of Agriculture that will be maintained by
2 the qualified borrower.

3 (6) A loan made to refinance a loan that meets the criteria stated in subsection (5) of this sec-
4 tion must be treated the same as a loan that meets the criteria stated in subsection (5) of this sec-
5 tion.

6 (7) For a qualified loan to be eligible for the tax credit allowable under this section, the Housing
7 and Community Services Department must execute a written certification for the qualified loan that:

8 (a) Specifies the period, not to exceed 20 years, as determined by the Housing and Community
9 Services Department, during which the tax credit is allowed for the qualified loan; and

10 (b) States that the qualified loan is within the limitation imposed by subsection (8) of this sec-
11 tion.

12 (8)(a) The Housing and Community Services Department may certify qualified loans that are
13 eligible under subsection (5) of this section if the total credits attributable to all qualified loans el-
14 igible for credits under this section and then outstanding **combined with credits attributable to**
15 **certified contributions under section 5 of this 2011 Act** do not exceed \$17 million for any fiscal
16 year.

17 (b) **Taxpayers that have received certification under subsection (7) of this section may**
18 **relinquish any remaining unclaimed credit to the Housing and Community Services Depart-**
19 **ment. The Housing and Community Services Department shall notify the Department of**
20 **Revenue in writing of the amount of any unclaimed, relinquished credits and may exclude**
21 **that amount from the calculation of total credits allowed for the fiscal year required under**
22 **paragraph (a) of this subsection.**

23 (9) In making loan certifications under subsection (7) of this section, the Housing and Commu-
24 nity Services Department shall attempt to distribute the tax credits statewide, but shall concentrate
25 the tax credits in those areas of the state that are determined by the State Housing Council to have
26 the greatest need for affordable housing.

27 [(9)] (10) The tax credit provided for in this section may be taken whether or not:

28 (a) The financial institution is eligible to take a federal income tax credit under section 42 of
29 the Internal Revenue Code with respect to the project financed by the qualified loan; or

30 (b) The project receives financing from bonds, the interest on which is exempt from federal
31 taxation under section 103 of the Internal Revenue Code.

32 [(10)] (11) For a qualified loan defined in subsection (1)(i)(B) of this section financed through the
33 purchase of bonds, the interest of which is exempt from federal taxation under section 103 of the
34 Internal Revenue Code, the amount of finance charge that would have been charged under sub-
35 section (2)(b) of this section is determined by reference to the finance charge that would have been
36 charged if the federally tax exempt bonds had been issued and the tax credit under this section did
37 not apply.

38 [(11)] (12) A lending institution may sell a qualified loan for which a certification has been ex-
39 ecuted to a qualified assignee whether or not the lending institution retains servicing of the quali-
40 fied loan so long as a designated lending institution maintains records, annually verified by a loan
41 servicer, that establish the amount of tax credit earned by the taxpayer throughout each year of
42 eligibility.

43 [(12)] (13) Notwithstanding any other provision of law, a lending institution that is a community
44 development corporation organized under the Oregon Nonprofit Corporation Law may transfer all
45 or part of a tax credit allowed under this section to one or more other lending institutions that are

1 stockholders or members of the community development corporation or that otherwise participate
 2 through the community development corporation in the making of one or more qualified loans for
 3 which the tax credit under this section is allowed.

4 [(13)] (14) The lending institution shall file an annual statement with the Housing and Commu-
 5 nity Services Department, specifying that it has conformed with all requirements imposed by law to
 6 qualify for a tax credit under this section.

7 [(14)] (15) Notwithstanding subsection (1)(h) and (j) of this section, a qualified borrower on a
 8 loan to finance the construction, development, acquisition or rehabilitation of a manufactured
 9 dwelling park under subsection (5)(c) of this section must be a nonprofit corporation, manufactured
 10 dwelling park nonprofit cooperative, state governmental entity, local unit of government as defined
 11 in ORS 466.706 or housing authority.

12 [(15)] (16) The Housing and Community Services Department and the Department of Revenue
 13 may adopt rules to carry out the provisions of this section.

14 **SECTION 4.** Section 5 of this 2011 Act is added to and made a part of ORS chapter 315.

15 **SECTION 5.** (1) A taxpayer shall be allowed a credit against the taxes otherwise due un-
 16 der ORS chapter 316 (or if the taxpayer is a corporation, under ORS chapter 317 or 318), for
 17 a monetary contribution that is made during the tax year to the Oregon Affordable Housing
 18 Trust Fund established in section 2 of this 2011 Act and certified by the Housing and Com-
 19 munity Services Department. The amount of the credit shall equal the amount actually re-
 20 ceived by the Housing and Community Services Department from the taxpayer during the
 21 tax year.

22 (2) Upon receipt of a contribution, subject to the limitations in subsection (5) of this
 23 section and ORS 317.097 (8), the Housing and Community Services Department shall provide
 24 written certification to the taxpayer. The certification shall indicate the amount of credit
 25 allowed and the tax year in which the contribution was received.

26 (3) The Housing and Community Services Department shall deposit in the Oregon Af-
 27 fordable Housing Trust Fund established in section 2 of this 2011 Act all contributions re-
 28 ceived in exchange for tax credits under this section.

29 (4) Any tax credit allowed under this section that is not used by the taxpayer in a par-
 30 ticular year may be carried forward and offset against the taxpayer's tax liability for the
 31 next succeeding tax year. Any credit remaining unused in the next succeeding tax year may
 32 be carried forward and used in the second succeeding tax year, but may not be carried for-
 33 ward for any tax year thereafter.

34 (5) The amount of contributions certified under this section by the Housing and Com-
 35 munity Services Department in a fiscal year may not, when combined with the amount of
 36 qualified loans that are eligible for a credit under ORS 317.097 and then outstanding, result
 37 in available credits that exceed the limitation in ORS 317.097 (8).

38 **SECTION 6.** Section 5 of this 2011 Act applies to contributions received after the effective
 39 date of this 2011 Act and to tax years beginning on or after January 1, 2011.

40 **SECTION 7.** Section 30, chapter 913, Oregon Laws 2009, is amended to read:

41 **Sec. 30.** The Housing and Community Services Department may not issue a certificate under
 42 ORS 317.097 or section 5 of this 2011 Act on or after January 1, 2014.

43 **SECTION 8.** This 2011 Act takes effect on the 91st day after the date on which the 2011
 44 session of the Seventy-sixth Legislative Assembly adjourns sine die.