

Enrolled House Bill 2154

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

CHAPTER

AN ACT

Relating to tax credits for farmworker housing; creating new provisions; amending ORS 215.277, 215.278, 315.163, 315.164, 315.167 and 315.169; and prescribing an effective date.

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

SECTION 1. ORS 315.163 is amended to read:

315.163. As used in ORS 315.163 to 315.172:

(1) "Acquisition costs" means the cost of acquiring buildings, structures and improvements that constitute or will constitute farmworker housing. "Acquisition costs" does not include the cost of acquiring land on which farmworker housing is or will be located.

(2) "Condition of habitability" means a condition that is in compliance with:

(a) The applicable provisions of the state building code under ORS chapter 455 and the rules adopted thereunder; or

(b) If determined on or before December 31, 1995, sections 12 and 13, chapter 964, Oregon Laws 1989.

(3) "Contributor" means a person:

(a) That acquired, constructed, manufactured or installed farmworker housing or contributed money to finance a farmworker housing project; or

(b) That has purchased or otherwise received via transfer a credit as provided in ORS 315.169 (2).

(4) "Eligible costs" includes acquisition costs, finance costs, construction costs, excavation costs, installation costs and permit costs and excludes land costs.

(5) "Farmworker" means any person who, for an agreed remuneration or rate of pay, performs temporary or permanent labor for another in the:

(a) Production of [*farm*] **agricultural or aquacultural crops or products** [*or in the*];

(b) Handling of agricultural or aquacultural crops or products in an unprocessed stage;

(c) Processing of agricultural or aquacultural crops or products;

(d) Planting, cultivating or harvesting of seasonal agricultural crops [*or in the*]; or

(e) Forestation or reforestation of lands, including but not limited to the planting, transplanting, tubing, precommercial thinning and thinning of trees and seedlings, the clearing, piling and disposal of brush and slash and other related activities.

(6) "Farmworker housing" means housing:

(a) Limited to occupancy by farmworkers, **including farmworkers who are retired or disabled**, and their immediate families; and

(b) No dwelling unit of which is occupied by a relative of the owner or operator of the farmworker housing, **except in the case of a manufactured dwelling in a manufactured dwelling park nonprofit cooperative as that term is defined in ORS 62.803.**

(7) "Farmworker housing project" means the acquisition, construction, installation or rehabilitation of farmworker housing.

(8) "Owner" means a person that owns farmworker housing. "Owner" does not include a person that only has an interest in the housing as a holder of a security interest.

(9) "Rehabilitation" means to make repairs or improvements to a building that improve its livability and are consistent with applicable building codes.

(10) "Relative" means a brother or sister (whether by the whole or by half blood), spouse, ancestor (whether by law or by blood), or lineal descendant of an individual.

(11) "Taxpayer" includes a nonprofit corporation, **a tax-exempt entity** or **any** other person not subject to tax under ORS chapter 316, 317 or 318.

SECTION 2. ORS 315.164 is amended to read:

315.164. (1) A taxpayer who is the owner or operator of farmworker housing is allowed a credit against the taxes otherwise due under ORS chapter 316, if the taxpayer is a resident individual, or against the taxes otherwise due under ORS chapter 317, if the taxpayer is a corporation. The total amount of the credit shall be equal to 50 percent of the eligible costs actually paid or incurred by the taxpayer to complete a farmworker housing project, to the extent the eligible costs actually paid or incurred by the taxpayer do not exceed the estimate of eligible costs approved by the Housing and Community Services Department under ORS 315.167.

(2) A taxpayer who is otherwise eligible to claim a credit under this section may elect to transfer all or a portion of the credit to a contributor in the manner provided in ORS 315.169.

(3)(a) The credit allowed under this section may be taken for the tax year in which the farmworker housing project is completed or in any of the nine tax years succeeding the tax year in which the project is completed.

(b) The credit allowed in any one tax year may not exceed 20 percent of the amount determined under subsection (1) of this section.

(4)(a) To claim a credit under this section, a taxpayer must show in each year following the completion of a farmworker housing project that the housing continues to be operated as farmworker housing.

(b) A taxpayer need not make the showing required in paragraph (a) of this subsection if the Housing and Community Services Department waives the requirement after the taxpayer has successfully met the requirement for the first five years after completion of the housing project.

(c) The Housing and Community Services Department shall determine by rule the factors necessary to grant a waiver. Such factors may include a documented decline in a particular area for farmworker housing.

(5) The credit shall apply only to a farmworker housing project that is located within this state and physically begun on or after January 1, 1990.

(6)(a) A credit may not be allowed under this section unless the taxpayer claiming credit under this section:

(A) Obtains a letter of credit approval from the Housing and Community Services Department pursuant to ORS 315.167; and

(B) Files with the Department of Revenue an annual certification providing that all occupied units for which credit is being claimed are occupied by farmworkers, **including farmworkers who are retired or disabled**, and their immediate families.

(b) The certification described under this subsection shall be made on the form and in the time and manner prescribed by the Department of Revenue.

(7) Except as provided under subsection (8) of this section, the credit allowed in any one year may not exceed the tax liability of the taxpayer.

(8) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer's tax liability for the

next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, and any credit not used in that fifth succeeding tax year may be carried forward and used in the sixth succeeding tax year, and any credit not used in that sixth succeeding tax year may be carried forward and used in the seventh succeeding tax year, and any credit not used in that seventh succeeding tax year may be carried forward and used in the eighth succeeding tax year, and any credit not used in that eighth succeeding tax year may be carried forward and used in the ninth succeeding tax year, but may not be carried forward for any tax year thereafter.

(9)(a) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the project to which the taxpayer otherwise may be entitled under ORS chapter 316 or 317 for the year.

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

(10) For a taxpayer to receive a credit under this section, the farmworker housing must:

(a) Comply with all occupational safety or health laws, rules, regulations and standards;

(b) If registration is required, be registered as a farmworker camp with the Department of Consumer and Business Services under ORS 658.750;

(c) Upon occupancy and if an indorsement is required, be operated by a person who holds a valid indorsement as a farmworker camp operator under ORS 658.730; and

(d) Continue to be operated as farmworker housing for a period of at least 10 years after the completion of the farmworker housing project, unless a waiver has been granted under subsection (4) of this section.

(11)(a) Pursuant to the procedures for a contested case under ORS chapter 183, the Department of Revenue may order the disallowance of the credit allowed under this section if it finds, by order, that:

(A) The credit was obtained by fraud or misrepresentation; or

(B) In the event that an owner or operator claims or claimed the credit:

(i) The taxpayer has failed to continue to substantially comply with the occupational safety or health laws, rules, regulations or standards;

(ii) After occupancy and if registration is required, the farmworker housing is not registered as a farmworker camp with the Department of Consumer and Business Services under ORS 658.750;

(iii) After occupancy and if an indorsement is required, the farmworker housing is not operated by a person who holds a valid indorsement as a farmworker camp operator under ORS 658.730; or

(iv) The taxpayer has failed to make a showing that the housing continues to be operated as farmworker housing as required under subsection (4)(a) of this section and the taxpayer has not been granted a waiver by the Housing and Community Services Department under subsection (4)(b) of this section.

(b) If the tax credit is disallowed pursuant to this subsection, notwithstanding ORS 314.410 or other law, all prior tax relief provided to the taxpayer shall be forfeited and the Department of Revenue shall proceed to collect those taxes not paid by the taxpayer as a result of the prior granting of the credit.

(c) If the tax credit is disallowed pursuant to this subsection, the taxpayer shall be denied any further credit provided under this section, in connection with the farmworker housing project, as the case may be, from and after the date that the order of disallowance becomes final.

(12) In the event that the farmworker housing is destroyed by fire, flood, natural disaster or act of God before all of the credit has been used, the taxpayer may nevertheless claim the credit as if no destruction had taken place. In the event of fire, if the fire chief of the fire protection district or unit determines that the fire was caused by arson, as defined in ORS 164.315 and 164.325, by the

taxpayer or by another at the taxpayer's direction, then the fire chief shall notify the Department of Revenue. Upon conviction of arson, the Department of Revenue shall disallow the credit in accordance with subsection (11) of this section.

(13)(a) A nonresident individual shall be allowed the credit computed in the same manner and subject to the same limitations as the credit allowed a resident by this section. However, the credit shall be prorated using the proportion provided in ORS 316.117.

(b) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(c) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(14) The Department of Revenue may adopt rules for carrying out the provisions of this section.

SECTION 3. ORS 315.167 is amended to read:

315.167. [(1)(a) *Prior to six months after beginning a farmworker housing project:*]

[*(A) For which credit under ORS 315.164 will be claimed, an owner or operator of farmworker housing shall apply to the Housing and Community Services Department for a letter of credit approval.*]

[*(B) For which credit under ORS 315.169 will be claimed, a contributor shall apply to the Housing and Community Services Department for a letter of credit approval.*]

[*(b) If a portion of credit for a farmworker housing project is to be claimed by the owner or operator of farmworker housing under ORS 315.164 and the remainder is to be claimed by a contributor under ORS 315.169, the application described in this section shall be filed jointly by the owner or operator of farmworker housing and the contributor.*]

(1) Prior to the completion of a farmworker housing project for which credit under ORS 315.164 will be claimed, an owner or operator of farmworker housing shall apply to the Housing and Community Services Department for a letter of credit approval.

(2) The application shall be on such form as is prescribed by the Housing and Community Services Department and shall provide:

(a) The name, address and taxpayer identification number of the taxpayer;

(b) The location of the proposed farmworker housing;

(c) A description of the project identifying the type of housing that is the subject of the project;

(d) An estimate of the eligible costs of the project;

(e) The number of units in the project dedicated to farmworker housing and the eligible costs associated with the units;

(f) The amount of credit to be claimed by the owner or operator of farmworker housing, and the amount of credit, if any, to be claimed by a contributor under ORS 315.169; and

[*(e)*] **(g)** Any other information as the Housing and Community Services Department may require.

(3) The Housing and Community Services Department may review applications using any reasonable system of prioritizing review established by department rule.

(4) Applications filed in compliance with this section shall be approved by the Housing and Community Services Department to the extent that the total of estimated eligible costs for all approved projects for the calendar year is equal to or less than \$7.25 million. No application shall be approved if the addition of the estimated eligible costs of the project to the estimated eligible costs for all approved projects for the calendar year would exceed \$7.25 million.

(5) Upon approval of an application, the Housing and Community Services Department shall prepare a letter of credit approval. The letter shall state the approved amount of estimated eligible costs for the project and, if applicable, the portion of credit to be claimed by an owner or operator of farmworker housing under ORS 315.164 and the portion of credit to be claimed by a contributor under ORS 315.169. The letter shall be sent:

(a) To the owner or operator of farmworker housing, if any credit is to be claimed under ORS 315.164; and

(b) To the contributor, if any credit is to be claimed under ORS 315.169 **and if the contributor has been identified at the time of approval.**

(6) At the conclusion of each calendar year, the Housing and Community Services Department shall send a list of the names, addresses and taxpayer identification numbers of taxpayers to whom a letter of credit approval has been issued under this section during the calendar year, along with approved amounts of estimated eligible costs for each project, to the Department of Revenue.

(7) Notwithstanding that a letter of credit approval has been issued to a taxpayer under this section, the Department of Revenue may disallow, in whole or in part, a claim for credit under ORS 315.164 upon the Department of Revenue's determination that under the provisions of ORS 315.164 the taxpayer is not entitled to the credit or is only entitled to a portion of the amount claimed.

SECTION 4. ORS 315.169 is amended to read:

315.169. (1) A taxpayer that is a contributor is allowed a credit against the taxes otherwise due under ORS chapter 316, if the taxpayer is a resident individual, or ORS chapter 317, if the taxpayer is a corporation, to the extent the owner or operator of farmworker housing transferred all or a portion of the credit allowed to the owner or operator under ORS 315.164.

(2) An owner or operator of farmworker housing may transfer all or a portion of the credit allowed to the owner or operator under ORS 315.164 to one or more contributors but the amount transferred may not total more than the total credit the owner or operator may claim.

(3) To receive a credit under this section:

(a) The contributor must obtain a letter of credit approval from the Housing and Community Services Department under ORS 315.167; or

(b) If the owner or operator of farmworker housing elects to transfer all or a portion of the credit allowed under ORS 315.164 after the date that a letter of credit approval has been issued to the owner or operator, the owner or operator and the contributor must jointly file a statement with the Department of Revenue stating the portion of the credit the contributor is allowed to claim and any other information the department may require by rule.

(4) A contributor remains eligible to receive a credit under this section even if the owner or operator of the farmworker housing becomes ineligible for the credit as a result of:

(a) Failure to file the annual certification under ORS 315.164 (6);

(b) Failure to continue to substantially comply with occupational safety or health laws, rules, regulations or standards under ORS 315.164 (10);

(c) Failure to register as a farmworker camp with the Department of Consumer and Business Services under ORS 658.750;

(d) Failure of the operator to hold a valid indorsement as a farmworker camp operator under ORS 658.730; or

(e) Failure to comply with any other rules or provisions relating to the operation or maintenance of the farmworker housing after [*the contributor has completed*] work on the project **has been completed.**

(5)(a) A contributor does not remain eligible to receive a credit under this section if the Department of Revenue finds, by order of a disallowance of credit and pursuant to the procedures for a contested case under ORS chapter 183, that the contributor obtained the credit by fraud or misrepresentation, including a finding that the housing did not comply with all occupational safety or health laws, rules, regulations and standards applicable for farmworker housing at the time the housing was completed.

(b) If the credit is disallowed pursuant to this subsection, notwithstanding ORS 314.410 or other law, all prior tax relief provided to the taxpayer shall be forfeited and the department shall proceed to collect those taxes not paid by the taxpayer as a result of the prior granting of the credit.

(c) If the credit is disallowed pursuant to this subsection, the taxpayer shall be denied any further credit provided under this section, in connection with the farmworker housing project, as the case may be, from and after the date that the order of disallowance becomes final.

(6)(a) The credit allowed under this section may be taken for the tax year in which the farmworker housing project is completed or in any of the nine tax years succeeding the tax year in which the project is completed.

(b) The credit allowed in any one tax year may not exceed 20 percent of the amount determined under subsection (2) of this section that was transferred to the contributor claiming the credit.

(7) Except as provided under subsection (8) of this section, the credit allowed in any one year may not exceed the tax liability of the taxpayer.

(8) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise any credit not used in that second succeeding tax year may be carried forward and used in the third succeeding tax year, and any credit not used in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, and any credit not used in that fifth succeeding tax year may be carried forward and used in the sixth succeeding tax year, and any credit not used in that sixth succeeding tax year may be carried forward and used in the seventh succeeding tax year, and any credit not used in that seventh succeeding tax year may be carried forward and used in the eighth succeeding tax year, and any credit not used in that eighth succeeding tax year may be carried forward and used in the ninth succeeding tax year, but may not be carried forward for any tax year thereafter.

(9)(a) A nonresident individual shall be allowed the credit computed in the same manner and subject to the same limitations as the credit allowed a resident by this section. However, the credit shall be prorated using the proportion provided in ORS 316.117.

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

(c) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(10) The department may adopt rules for carrying out the provisions of this section.

SECTION 5. ORS 215.277 is amended to read:

215.277. It is the intent of the Legislative Assembly that the provision of farmworker housing, as defined in ORS [315.163] **215.278**, not allow other types of dwellings not otherwise permitted in exclusive farm use zones and that [such] farmworker housing be consistent with the intent and purposes set forth in ORS 215.243.

SECTION 6. ORS 215.278 is amended to read:

215.278. (1) The Land Conservation and Development Commission shall revise administrative rules regarding dwellings customarily provided in conjunction with farm use to allow, under ORS 215.213 and 215.283, the establishment of accessory dwellings needed to provide opportunities for farmworker housing for individuals primarily engaged in farm use whose assistance in the management of the farm is or will be required by the farm operator on the farm unit.

(2) As used in this section[,]:

(a) "Farm unit" means the contiguous and noncontiguous tracts in common ownership used by the farm operator for farm use as defined in ORS 215.203.

(b) "**Farmworker**" means an individual who, for an agreed remuneration or rate of pay, performs labor, temporarily or on a continuing basis, for a person in the:

(A) **Production of farm products;**

(B) **Planting, cultivating or harvesting of seasonal agricultural crops; or**

(C) **Forestation or reforestation of land, including but not limited to planting, transplanting, tubing, precommercial thinning and thinning of trees or seedlings, the clearing, piling and disposal of brush and slash and other related activities.**

- (c) "Farmworker housing" means housing:
 - (A) Limited to occupancy by farmworkers and their immediate families; and
 - (B) No dwelling unit of which is occupied by a relative of the owner or operator of the farmworker housing.

(d) "Owner" means a person that owns farmworker housing. "Owner" does not mean a person whose interest in the farmworker housing is that of a holder of a security interest in the housing.

- (e) "Relative" means:
 - (A) A spouse of the owner or operator; and
 - (B) An ancestor, lineal descendant or whole or half sibling of the owner or operator or the spouse of the owner or operator.

SECTION 7. (1) The amendments to ORS 315.163 and 315.164 by sections 1 and 2 of this 2011 Act apply to tax years beginning on or after January 1, 2008.

(2) The amendments to ORS 315.167 and 315.169 by sections 3 and 4 of this 2011 Act apply to applications for a letter of credit approval filed under ORS 315.167 on or after the effective date of this 2011 Act.

(3) The amendments to ORS 215.277 and 215.278 by sections 5 and 6 of this 2011 Act apply, on and after the effective date of this 2011 Act, to farmworker housing in areas zoned for exclusive farm use.

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

Passed by House June 7, 2011

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 Ramona Kenady Line, Chief Clerk of House

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 Bruce Hanna, Speaker of House

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 Arnie Roblan, Speaker of House

Passed by Senate June 10, 2011

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 Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2011

Approved:

.....M.,....., 2011

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 John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

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 Kate Brown, Secretary of State