

# House Bill 2163

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor John A. Kitzhaber for Oregon Business Development 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 income tax credit for business firms doing business in traded sector, based on increase in annual payroll.

Provides for certification by Oregon Business Development Department. Authorizes department to certify business firms on or after October 1, 2011, and on or before December 31, 2017.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to tax incentives for increases in traded sector business firm payroll; creating new pro-  
3 visions; amending ORS 314.752 and 318.031; and prescribing an effective date.

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

5 **SECTION 1. Sections 2 to 6 of this 2011 Act are added to and made a part of ORS chapter**  
6 **285C.**

7 **SECTION 2. As used in sections 2 to 6 of this 2011 Act:**

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

11 (2) "Annual gross payroll" means wages, salaries and other remuneration paid in a year  
12 to persons employed by a business firm, or to a licensed worker leasing company contracting  
13 with the business firm to provide workers, and payments in the year for workers' compen-  
14 sation, payroll taxes, pension or other retirement plan contributions, health or other insur-  
15 ance premiums and other similar benefits for such persons employed by the business firm,  
16 or the licensed worker leasing company, excluding executive officers or employees who own  
17 a five percent or greater share in the business firm.

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

19 (4) "Certified business firm" means a business firm that has been certified under section  
20 3 of this 2011 Act.

21 (5) "County per capita personal income" means the annual per capita personal income  
22 level published by the Bureau of Economic Analysis of the United States Department of  
23 Commerce for a county at the time a business firm is certified under section 3 of this 2011  
24 Act.

25 **SECTION 3. (1) A business firm seeking the income or corporate excise tax credit allowed**  
26 **under section 10 of this 2011 Act shall apply to the Oregon Business Development Depart-**  
27 **ment for certification under this section.**

28 (2) The application must be on a form prescribed by the Oregon Business Development  
29 Department and must contain the following information:

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 (a) The locations or proposed locations at which the business firm is or will be doing  
2 business;

3 (b) A description of new or expanded operations to be conducted by the business firm and  
4 the intended duration of such operations;

5 (c) For the 12 months preceding the application for certification, the average number of  
6 full-time, year-round employees of the business firm in this state;

7 (d) 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 of the business firm;

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

12 (f) The proposed amount of new investment by the business firm in facility improve-  
13 ments; and

14 (g) Any other information the department requires.

15 (3) An application filed under this section must be accompanied by a fee in an amount  
16 prescribed by the Oregon Business Development Department. The fee required under this  
17 subsection must not exceed \$5,000.

18 (4) When an application is filed under this section, the Oregon Business Development  
19 Department shall review the application and determine whether:

20 (a) The business firm is doing business in a traded sector, as defined in ORS 285B.280;

21 (b) The business firm will do business in this state for at least 10 years following the date  
22 the certification is issued;

23 (c) Prior to certification, the business firm will hire additional employees, with a net gain  
24 of at least 50 full-time, year-round employees; and

25 (d) The increase in annual gross payroll of the business firm in any county divided by the  
26 change in annual full-time equivalent employment of the business firm in that county will  
27 equal or exceed 125 percent of the county per capita personal income.

28 (5) Prior to issuing a certification under subsection (6) of this section, the Oregon Busi-  
29 ness Development Department shall enter into a performance agreement with the business  
30 firm. The agreement must contain a statement by the business firm that the business firm  
31 would not have increased its annual gross payroll but for the availability of the credit allowed  
32 under section 10 of this 2011 Act. The agreement must contain detailed performance meas-  
33 ures the business firm must comply with related to the requirements of section 10 of this  
34 2011 Act.

35 (6) The Oregon Business Development Department shall issue a certification to the  
36 business firm, and furnish a copy to the Department of Revenue, if the Oregon Business  
37 Development Department determines:

38 (a) The business firm satisfies the requirements for certification described in subsection  
39 (4) of this section if the business firm operates as described in the application filed under this  
40 section;

41 (b) The business firm is performing according to the performance agreement required  
42 under subsection (5) of this section; and

43 (c) The application does not relate to a facility that is certified for a tax credit under  
44 ORS 317.124.

45 (7) The certification issued by the Oregon Business Development Department pursuant

1 to subsection (6) of this section must specify:

2 (a) The current county per capita personal income of the counties in which the business  
3 firm is doing business.

4 (b) The following information related to the business firm, as disclosed in the application  
5 as existing at the time of application:

6 (A) The number of full-time, year-round employees;

7 (B) The annual gross payroll; and

8 (C) The annual full-time equivalent employment in this state.

9 (c) Any other information that the department deems appropriate.

10 (8) If the Oregon Business Development Department determines that the business firm  
11 does not meet the requirements for certification described in subsection (4) of this section,  
12 the department may not issue a certification.

13 (9) A decision of the Oregon Business Development Department to decline to issue a  
14 certification under this section may be appealed in the same manner as a contested case  
15 under ORS chapter 183. The failure of the department to issue a certification within the time  
16 period required under subsection (10) of this section is not appealable under this section if  
17 the failure to issue the certification results from a limitation on the number of certifications  
18 permitted by law.

19 (10) The department must approve or disapprove an application under this section within  
20 60 days after the date that the business firm demonstrates to the department that the  
21 business firm has hired the number of employees indicated in the application.

22 **SECTION 4.** A certified business firm with a facility certified for a tax credit under ORS  
23 317.124 does not qualify for certification for a tax credit under section 10 of this 2011 Act.  
24 The Oregon Business Development Department shall issue a revocation of certification is-  
25 sued under section 3 of this 2011 Act to the business firm and furnish a copy of the revoca-  
26 tion to the Department of Revenue.

27 **SECTION 5.** The Oregon Business Development Department may adopt rules that the  
28 department considers necessary to administer sections 2 to 6 of this 2011 Act.

29 **SECTION 6.** The Oregon Business Development Department may not issue more than 20  
30 certifications under section 3 of this 2011 Act each biennium.

31 **SECTION 7.** The Oregon Business Development Department may issue certifications un-  
32 der section 3 of this 2011 Act for applications received on or after October 1, 2011, and on  
33 or before December 31, 2017.

34 **SECTION 8.** Sections 9 to 11 of this 2011 Act are added to and made a part of ORS  
35 chapter 315.

36 **SECTION 9.** As used in sections 9 to 11 of this 2011 Act, “annual full-time equivalent  
37 employment,” “annual gross payroll,” “certified business firm” and “county per capita per-  
38 sonal income” have the meanings given those terms in section 2 of this 2011 Act.

39 **SECTION 10.** (1) A credit against taxes that are otherwise due under ORS chapter 316  
40 or, if the taxpayer is a corporation, under ORS chapter 317 or 318, is allowed to a taxpayer  
41 that is a certified business firm, if the taxpayer establishes that:

42 (a) The taxpayer is doing business in a traded sector, as defined in ORS 285B.280;

43 (b) The taxpayer will do business in this state for at least 10 years following the date the  
44 certification is issued;

45 (c) The annual average number of full-time, year-round employees of the taxpayer in this

1 state has increased by 50 or more employees since the date of application for certification  
 2 under section 3 of this 2011 Act; and

3 (d) Since the date of application for certification under section 3 of this 2011 Act, the  
 4 increase in annual gross payroll of the taxpayer in any county divided by the change in an-  
 5 nual full-time equivalent employment of the taxpayer in that county is equal to or greater  
 6 than 125 percent of the county per capita personal income.

7 (2) The credit allowed under this section is based on the increase in the annual gross  
 8 payroll of the taxpayer in the tax year relative to the taxpayer's annual gross payroll at the  
 9 time of application for certification under section 3 of this 2011 Act, and shall equal 15 per-  
 10 cent of the increase in annual gross payroll.

11 (3) The credit allowed under this section may not exceed \$10 million for any one tax year.

12 (4) The credit allowed under this section may be claimed for each of five successive tax  
 13 years, of which the first tax year begins on or before January 1 of the third calendar year  
 14 after the year in which the certification is issued under section 3 of this 2011 Act.

15 (5) A taxpayer seeking a credit under this section shall claim the credit on a form pre-  
 16 scribed by the Department of Revenue that contains, for the tax year for which the credit  
 17 is claimed, the following information related to the taxpayer:

18 (a) The annual average number of full-time, year-round employees;

19 (b) The annual gross payroll;

20 (c) The annual full-time equivalent employment in this state; and

21 (d) Any other information required by the department.

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

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

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

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

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

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

43 **SECTION 11.** (1) A taxpayer that has claimed a credit under section 10 of this 2011 Act  
 44 shall maintain records sufficient to show:

45 (a) That the taxpayer continued to operate with an annual average number of full-time,

1 year-round employees that equals the number established in the certification under section  
 2 3 of this 2011 Act for at least 10 years after the date the Oregon Business Development De-  
 3 partment issued the certification; and

4 (b) That the taxpayer has met the requirements for certification described in section 3  
 5 (4) of this 2011 Act and the criteria for allowing and computing the credit under section 10  
 6 of this 2011 Act.

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

9 (3) The taxpayer shall maintain the records described in this section for at least 10 years  
 10 following the last tax year for which the taxpayer claims any credit under section 10 of this  
 11 2011 Act.

12 (4) The Department of Revenue shall disallow the credit claimed under section 10 of this  
 13 2011 Act for the current or any prior tax year, and collect any taxes that were not paid as  
 14 a result of application of the credit, if:

15 (a) The taxpayer is discovered, in violation of subsection (1) of this section, to have closed  
 16 or curtailed operations or to have failed to meet a requirement for certification described in  
 17 section 3 (4) of this 2011 Act; or

18 (b) Certification is revoked under section 4 of this 2011 Act.

19 (5) For purposes of collecting taxes due under subsection (4) of this section, the Depart-  
 20 ment of Revenue shall have the benefit of all laws of this state pertaining to the collection  
 21 of income and corporate excise taxes. No assessment of these taxes shall be necessary and  
 22 no statute of limitations shall preclude the collection of these taxes.

23 **SECTION 12.** ORS 314.752, as amended by section 26, chapter 76, Oregon Laws 2010, is  
 24 amended to read:

25 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a  
 26 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The  
 27 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are  
 28 allowable to the shareholders of the S corporation.

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

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

38 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax  
 39 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS  
 40 316.117, then that provision shall apply to the nonresident shareholder.

41 (5) As used in this section, "business tax credit" means a tax credit granted to personal income  
 42 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive  
 43 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-  
 44 section as a business tax credit or is designated as a business tax credit by law or by the Depart-  
 45 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309

1 (tribal taxes on reservation enterprise zones and reservation partnership zones), ORS 315.104 (fore-  
 2 station and reforestation), ORS 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-  
 3 pass devices, fishways), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing),  
 4 ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (con-  
 5 tributions for child care), ORS 315.304 (pollution control facility), ORS 315.324 (plastics recycling),  
 6 ORS 315.354 and 469.207 (energy conservation facilities), ORS 315.507 (electronic commerce), ORS  
 7 315.511 (advanced telecommunications facilities), ORS 315.604 (bone marrow transplant expenses),  
 8 ORS 317.115 (fueling stations necessary to operate an alternative fuel vehicle) and ORS 315.141  
 9 (biomass production for biofuel) **and section 10 of this 2011 Act (payroll increases).**

10 **SECTION 13.** ORS 318.031 is amended to read:

11 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter  
 12 317 shall be administered as uniformly as possible (allowance being made for the difference in im-  
 13 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-  
 14 corporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.134, 315.141, 315.156,  
 15 315.204, 315.208, 315.213, 315.304, 315.507, 315.511 and 315.604 **and section 10 of this 2011 Act**, (all  
 16 only to the extent applicable to a corporation) and ORS chapter 317.

17 **SECTION 14. This 2011 Act takes effect on the 91st day after the date on which the 2011**  
 18 **session of the Seventy-sixth Legislative Assembly adjourns sine die.**

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