

House Bill 2411

Sponsored by Representatives READ, HUNT; Representatives BAILEY, BARKER, DOHERTY, GELSER, Senators EDWARDS, HASS (Pre-session filed.)

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 facility costs of business firms that construct facilities and engage in business operations in which average annual gross payroll and increase in number of employees meet specified requirements.

Requires interested firms to obtain certification from Oregon Business Development Department. Establishes business firm and biennial caps on amount of credit.

Authorizes Oregon Business Development Department to certify business firms on or after October 1, 2012, and on or before December 31, 2017. Applies to tax years beginning on or after January 1, 2012, and before January 1, 2023.

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 318.031;
3 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 the total number of hours in a year for which any employed person receives pay by
10 2,080.

11 (2) "Annual gross payroll" means wages, salaries and other remuneration paid in a year
12 to persons employed by a business firm or licensed worker leasing company contracting with
13 the business firm to provide workers at the facility and payments in the year for workers
14 compensation, payroll taxes, pension or other retirement plan contributions, health or other
15 insurance premiums and other similar benefits for such persons employed by the business
16 firm, excluding executive officers or employees who own a five percent or greater share in
17 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 income" means the annual per capita personal income level pub-
22 lished by the Bureau of Economic Analysis of the United States Department of Commerce
23 for a county at the time a business firm is certified under section 3 of this 2011 Act.

24 (6) "Distressed area" has the meaning given the term in ORS 285A.010.

25 (7) "Facility" means the land, real property improvements and personal property that are
26 used by a business firm to conduct business operations and that are the subject of an appli-
27 cation for certification under section 3 of this 2011 Act.

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

4 (a) Commences construction, reconstruction, modification or installation of property or
 5 improvements at the facility for which the credit is sought; and

6 (b) Hires employees to work at the facility for which the credit is sought.

7 (2) The application shall be on a form prescribed by the department and shall contain the
 8 following information:

9 (a) The proposed location of the facility;

10 (b) A description of new or expanded business activities to be conducted at the facility
 11 and the intended duration of such operations;

12 (c) A description of the property to be constructed, reconstructed, improved, modified,
 13 installed, acquired, leased, used or occupied that will comprise the facility when the business
 14 firm commences new or expanded business operations at the facility and, if the property is
 15 to be leased, the term of the lease;

16 (d) For the 12 months preceding the application for certification, the average number of
 17 full-time, year-round employees at the facility, annual gross payroll at the facility, annual
 18 full-time equivalent employment at the facility and annual full-time equivalent employment
 19 of the business firm elsewhere in this state;

20 (e) The intended number of full-time, year-round employees to be hired, average annual
 21 gross payroll and annual full-time equivalent employment for the proposed new or expanded
 22 operations at the facility;

23 (f) A description of any other business activities of the business firm in this state at the
 24 time of application; and

25 (g) Any other information the department requires.

26 (3) An application filed under this section shall be accompanied by a fee in an amount
 27 prescribed by the department. The fee required under this subsection may not exceed \$1,000.

28 (4) When an application is filed under this section, the department shall review the ap-
 29 plication and determine whether:

30 (a) The facility proposed in the application directly benefits a traded sector industry, as
 31 defined in ORS 285B.280;

32 (b) The facility proposed in the application will operate for at least 10 years from the date
 33 the facility becomes operational or for at least 10 years from the date the certification is
 34 issued, whichever is later;

35 (c) The business firm will hire at least five full-time, year-round employees to work at
 36 the facility proposed in the application; and

37 (d) Average annual gross payroll at the facility proposed in the application will equal or
 38 exceed 150 percent of the county per capita income.

39 (5) The Oregon Business Development Department shall issue a certification to the
 40 business firm and furnish a copy to the Department of Revenue, if the Oregon Business De-
 41 velopment Department determines:

42 (a) The proposed facility satisfies the requirements for certification described in sub-
 43 section (4) of this section if the proposed facility is completed and operated as described in
 44 the application filed under this section;

45 (b) The business firm does not presently employ more than 500 employees at the facility

1 proposed in the application; and

2 (c) The proposed facility is not certified for a tax credit under ORS 317.124.

3 (6) The certification issued by the Oregon Business Development Department pursuant
4 to subsection (5) of this section shall specify:

5 (a) Whether the facility is located in a distressed area.

6 (b) The current county per capita income of the county in which the facility is located.

7 (c) The following information, as disclosed in the application as existing at the time of
8 application:

9 (A) The number of full-time, year-round employees at the facility;

10 (B) The annual gross payroll at the facility; and

11 (C) The annual full-time equivalent employment at the facility and the annual full-time
12 equivalent employment of the certified business firm elsewhere in this state.

13 (d) Any other information that the department deems appropriate.

14 (7) If the department determines that the facility proposed in the application does not
15 meet the requirements for certification described in subsection (4) of this section, the de-
16 partment may not issue a certification.

17 (8) A decision of the department to disapprove an application or to decline to issue a
18 certification under this section may be appealed in the same manner as a contested case
19 under ORS chapter 183. The failure of the department to issue a certification within 120 days
20 of the filing of the application is not appealable under this section if the failure to issue the
21 certification results from a limitation on the number of certifications permitted by law.

22 (9) The department must approve or disapprove an application under this section within
23 120 days of the date the application is filed.

24 **SECTION 4.** If a business firm is certified under section 3 of this 2011 Act and the facility
25 that is the subject of the application for certification filed under section 3 of this 2011 Act
26 is certified for a tax credit under ORS 317.124, the business firm no longer qualifies for cer-
27 tification for a tax credit under section 10 of this 2011 Act. The Oregon Business Develop-
28 ment Department shall revoke the certification issued under section 3 of this 2011 Act. The
29 department shall issue a revocation of certification to the business firm and furnish a copy
30 of the revocation to the Department of Revenue.

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

33 **SECTION 6.** The Oregon Business Development Department may not issue more than 40
34 certifications under section 3 of this 2011 Act each biennium.

35 **SECTION 7.** The Oregon Business Development Department may issue certifications un-
36 der section 3 of this 2011 Act for applications received on or after October 1, 2012, and on
37 or before December 31, 2017.

38 **SECTION 8.** Sections 9 to 12 of this 2011 Act are added to and made a part of ORS
39 chapter 315.

40 **SECTION 9.** As used in sections 9 to 12 of this 2011 Act, “annual full-time equivalent
41 employment,” “annual gross payroll,” “business firm,” “certified business firm,” “county per
42 capita income,” “distressed area” and “facility” have the meanings given those terms in
43 section 2 of this 2011 Act.

44 **SECTION 10.** (1) A credit against taxes that are otherwise due under ORS chapter 316
45 or, if the taxpayer is a corporation, under ORS chapter 317 or 318, is allowed to a taxpayer

1 that is a certified business firm, if the business firm establishes that, in relation to the fa-
 2 cility for which the business firm received certification and in relation to the information
 3 established in the certification:

4 (a) The annual average number of full-time, year-round employees at the facility has in-
 5 creased by five or more employees;

6 (b) The combined annual full-time equivalent employment at the facility and the com-
 7 bined annual full-time equivalent employment of the certified business firm elsewhere in this
 8 state has increased or stayed the same; and

9 (c) The increase in annual gross payroll at the facility divided by the change in annual
 10 full-time equivalent employment at the facility is equal to or greater than 150 percent of the
 11 county per capita income.

12 (2) The credit allowed under this section is based on the increase in the annual gross
 13 payroll at the facility in the tax year relative to the facility's annual gross payroll at the time
 14 of application for certification under section 3 of this 2011 Act, and shall equal:

15 (a) Three percent of the increase in annual gross payroll at the facility; or

16 (b) If the facility is located in a distressed area at the time of certification under section
 17 3 of this 2011 Act, five percent of the increase in annual gross payroll at the facility.

18 (3) The credit allowed under this section may not exceed \$500,000 for any one tax year.

19 (4) The credit allowed under this section may be claimed for any of three successive tax
 20 years, of which the first tax year begins on or before January 1 of the third calendar year
 21 after the year in which the certification is issued under section 3 of this 2011 Act.

22 (5) A taxpayer seeking a credit under this section shall claim the credit on a form pre-
 23 scribed by the Department of Revenue that contains for the tax year for which the credit is
 24 claimed the annual average number of full-time, year-round employees at the facility, the
 25 annual gross payroll at the facility, the full-time equivalent employment at the facility, the
 26 full-time equivalent employment of the employer elsewhere in this state, and any other in-
 27 formation required by the department.

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

32 (c) A credit computed under this section for any tax year may not exceed the tax liability
 33 of the taxpayer for the tax year.

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

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

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

43 (7) Any tax credit otherwise allowable under this section that is not used by the taxpayer
 44 in a particular tax year may be carried forward and offset against the taxpayer's tax liability
 45 for the next succeeding tax year. Any credit remaining unused in the second succeeding tax

1 year may be carried forward and used in the third succeeding tax year. Any credit remaining
 2 unused in the third succeeding tax year may be carried forward and used in the fourth suc-
 3 ceeding tax year. Any credit remaining unused in the fourth succeeding tax year may be
 4 carried forward and used in the fifth succeeding tax year, but may not be used in any tax
 5 year thereafter.

6 **SECTION 11.** A business firm certified under section 3 of this 2011 Act may sell up to 50
 7 percent of the tax credit allowed under section 10 of this 2011 Act to another taxpayer. The
 8 sale is effective only if a notice of tax credit transfer is filed with the Department of Revenue
 9 on or before the date on which the income or corporate excise tax return of the certified
 10 business firm, for the tax year in which the credit is to be claimed, is filed. The notice shall
 11 be filed on a form prescribed by the department that includes:

- 12 (1) The name and taxpayer identification number of the certified business firm that is
- 13 selling the credit;
- 14 (2) The name and taxpayer identification number of the buyer;
- 15 (3) The amount of the tax credit that is being sold to the buyer;
- 16 (4) The amount of the tax credit that is being retained by the seller; and
- 17 (5) Any other information required by the department.

18 **SECTION 12.** (1) A taxpayer that has claimed a credit under section 10 of this 2011 Act
 19 shall maintain records sufficient to show:

20 (a) That the facility for which a business firm received certification under section 3 of
 21 this 2011 Act continued to operate with an annual average number of full-time, year-round
 22 employees at the facility that exceeds the number established in the certification by no less
 23 than five, for at least 10 years after the later of the date the facility became operational or
 24 the date the Oregon Business Development Department issued the certification; and

25 (b) That the facility has met the requirements for certification described in section 3 (4)
 26 of this 2011 Act or the criteria for allowing or computing the credit under section 10 of this
 27 2011 Act.

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

30 (3) The taxpayer shall maintain the records described in this section for at least 10 years
 31 following the last tax year for which the taxpayer claims any credit under section 10 of this
 32 2011 Act. The parties to the transfer of a tax credit under section 11 of this 2011 Act must
 33 arrange for the maintenance of the records.

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

37 (a) The facility for which the business firm received a certification under section 3 of this
 38 2011 Act is discovered, in violation of subsection (1) of this section, to have closed or cur-
 39 tailed operations or to have failed to meet a requirement for certification described in sec-
 40 tion 3 (4) of this 2011 Act; or

41 (b) The certification is revoked under section 4 of this 2011 Act.

42 (5) For purposes of collecting taxes due under subsection (4) of this section, the depart-
 43 ment shall have the benefit of all laws of this state pertaining to the collection of income
 44 and corporate excise taxes. No assessment of these taxes shall be necessary and no statute
 45 of limitations shall preclude the collection of these taxes.

1 **SECTION 13.** Sections 9 to 12 of this 2011 Act apply to tax years beginning on or after
 2 **January 1, 2012, and before January 1, 2023.**

3 **SECTION 14.** ORS 314.752, as amended by section 26, chapter 76, Oregon Laws 2010, is
 4 amended to read:

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

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

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

18 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
 19 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
 20 316.117, then that provision shall apply to the nonresident shareholder.

21 (5) As used in this section, "business tax credit" means a tax credit granted to personal income
 22 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive
 23 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-
 24 section as a business tax credit or is designated as a business tax credit by law or by the Depart-
 25 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309
 26 (tribal taxes on reservation enterprise zones and reservation partnership zones), ORS 315.104 (fore-
 27 station and reforestation), ORS 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-
 28 pass devices, fishways), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing),
 29 ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (con-
 30 tributions for child care), ORS 315.304 (pollution control facility), ORS 315.324 (plastics recycling),
 31 ORS 315.354 and 469.207 (energy conservation facilities), ORS 315.507 (electronic commerce), ORS
 32 315.511 (advanced telecommunications facilities), ORS 315.604 (bone marrow transplant expenses),
 33 ORS 317.115 (fueling stations necessary to operate an alternative fuel vehicle) and ORS 315.141
 34 (biomass production for biofuel) **and section 10 of this 2011 Act (payroll increases).**

35 **SECTION 15.** ORS 318.031 is amended to read:

36 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter
 37 317 shall be administered as uniformly as possible (allowance being made for the difference in im-
 38 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-
 39 corporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.134, 315.141, 315.156,
 40 315.204, 315.208, 315.213, 315.304, 315.507, 315.511 and 315.604 (all only to the extent applicable to
 41 a corporation) and ORS chapter 317 **and section 10 of this 2011 Act.**

42 **SECTION 16.** This 2011 Act takes effect on the 91st day after the date on which the 2011
 43 session of the Seventy-sixth Legislative Assembly adjourns sine die.