

Senate Bill 193

Sponsored by Senator NELSON (Presession 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**.

Creates Oregon New Markets Development Program. Creates tax credit for qualified equity investments in low-income community businesses.

Applies to qualified equity investments made on or after July 1, 2012.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tax credits for investments in low-income communities; creating new provisions; amend-
3 ing 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 8 of this 2011 Act shall be known and may be cited as the**
6 **Oregon New Markets Development Program.**

7 **SECTION 2. As used in sections 2 to 8 of this 2011 Act:**

8 (1) **"Credit allowance date" means, with respect to any qualified equity investment:**

9 (a) **The date on which the investment is initially made; and**

10 (b) **Each of the six yearly anniversary dates after that initial date.**

11 (2) **"Long-term debt security" means any debt instrument issued by a qualified commu-**
12 **nity development entity, at par value or at a premium, with an original maturity date of at**
13 **least seven years from the date of its issuance, with no acceleration of repayment, amorti-**
14 **zation or prepayment features prior to its original maturity date.**

15 (3) **"Purchase price" means the amount of cash paid to a qualified community develop-**
16 **ment entity for a qualified equity investment.**

17 (4) **"Qualified active low-income community business" has the meaning given that term**
18 **in section 45D of the Internal Revenue Code.**

19 (5) **"Qualified community development entity" has the meaning given that term in section**
20 **45D of the Internal Revenue Code, provided that the entity has entered into, or is controlled**
21 **by an entity that has entered into, an allocation agreement with the Community Develop-**
22 **ment Financial Institutions Fund of the United States Department of the Treasury with re-**
23 **spect to credits authorized by section 45D of the Internal Revenue Code, and the State of**
24 **Oregon is included within the service area set forth in the allocation agreement.**

25 (6) **"Qualified equity investment" means any equity investment in, or long-term debt se-**
26 **curity issued by, a qualified community development entity, that:**

27 (a) **Is acquired at its original issuance solely in exchange for cash after July 1, 2012, un-**
28 **less it was a qualified equity investment in the hands of a prior holder; and**

29 (b) **Has at least 85 percent of its cash purchase price used by the issuer to make qualified**
30 **low-income community investments in qualified active low-income community businesses lo-**

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 cated in this state.

2 (7) "Qualified low-income community investment" means any capital or equity invest-
3 ment in, or loan to, any qualified active low-income community business made after July 1,
4 2012.

5 **SECTION 3.** Section 4 of this 2011 Act is added to and made a part of ORS chapter 315.

6 **SECTION 4.** (1) As used in this section, "applicable percentage" means zero percent for
7 each of the first two credit allowance dates, seven percent for the third credit allowance date
8 and eight percent for the next four credit allowance dates.

9 (2) A credit against the taxes otherwise due under ORS chapter 316 or, if the taxpayer
10 is a corporation, under ORS chapter 317 or 318 is allowed to a taxpayer that makes a quali-
11 fied equity investment.

12 (3)(a) The total amount of the tax credit available to a taxpayer under this section shall
13 equal 39 percent of the purchase price of the qualified equity investment.

14 (b) The taxpayer that holds a qualified equity investment on a particular credit allowance
15 date of the qualified equity investment may claim a portion of the tax credit against its tax
16 liability for the tax year that includes the credit allowance date equal to the applicable per-
17 centage for that credit allowance date multiplied by the purchase price of the qualified equity
18 investment.

19 (4) The credit allowed under this section may not exceed the tax liability of the taxpayer
20 for the tax year in which the credit is claimed.

21 (5) Any tax credit otherwise allowable under this section that is not used by the taxpayer
22 in a particular tax year may be carried forward and offset against the taxpayer's tax liability
23 in any succeeding tax year.

24 (6) The following conditions must exist for a taxpayer to be eligible for the credit allowed
25 under this section:

26 (a) A qualified community development entity that issues a debt instrument may not
27 make cash interest payments on the debt instrument during the period commencing with its
28 issuance and ending on its final credit allowance date in excess of the sum of the cash in-
29 terest payments and the cumulative operating income, as defined in the regulations
30 promulgated under section 45D of the Internal Revenue Code, of the qualified community
31 development entity for the same period. This paragraph does not limit the holder's ability to
32 accelerate payments on the debt instrument in situations where the qualified community
33 development entity has defaulted on covenants designed to ensure compliance with this sec-
34 tion or section 45D of the Internal Revenue Code.

35 (b) It must be reasonable to expect that at the time of the qualified community develop-
36 ment entity's investment in or loan to a qualified active low-income community business, the
37 business will continue to satisfy the requirements for being a qualified active low-income
38 community business throughout the entire period of the investment or loan.

39 (c) A qualified equity investment must be designated by the issuer as a qualified equity
40 investment and be certified by the Oregon Business Development Department as not ex-
41 ceeding the limitation in section 7 of this 2011 Act. The qualified community development
42 entity must keep sufficiently detailed books and records with respect to the investments
43 made with the proceeds of the qualified equity investments to allow the direct tracing of
44 proceeds into qualified low-income community investments in qualified active low-income
45 community businesses in this state.

1 (d) The qualified community development entity shall report annually to the department:

2 (A) The number of employment positions created and retained as a result of qualified
3 low-income community investments by the qualified community development entity;

4 (B) The average annual salary of positions described in subparagraph (A) of this para-
5 graph; and

6 (C) The number of positions described in subparagraph (A) of this paragraph that provide
7 health benefits.

8 (e) The maximum amount of qualified low-income community investments that may be
9 made in a qualified active low-income community business and all of its affiliates, with the
10 proceeds of qualified equity investments that have been certified under section 6 of this 2011
11 Act, shall be \$10 million, whether made by one or several qualified community development
12 entities.

13 (f) A qualified equity investment must be made before July 1, 2017. Nothing in this par-
14 agraph precludes a taxpayer that makes a qualified equity investment prior to July 1, 2017,
15 from claiming a tax credit relating to that qualified equity investment for each applicable
16 credit allowance date.

17 (7) A taxpayer claiming a credit under this section may not claim any other credit under
18 this chapter or ORS chapter 285C during the same tax year based on activities related to the
19 same qualified active low-income community business.

20 **SECTION 5.** A tax credit allowed under section 4 of this 2011 Act may not be sold or
21 transferred, with the exception that tax credits that a partnership, limited liability company,
22 S corporation or other pass-through entity is entitled to claim may be allocated to the
23 partners, members or shareholders of the entity for their direct use in accordance with the
24 provisions of any agreement among the partners, members or shareholders.

25 **SECTION 6.** (1) A taxpayer that is a qualified community development entity that seeks
26 to have an equity investment or long-term debt security certified as a qualified equity in-
27 vestment and eligible for a tax credit under section 4 of this 2011 Act shall apply to the
28 Oregon Business Development Department. The department shall establish by rule applica-
29 tion procedures for applications for certification. The taxpayer must submit an application
30 on a form that the department provides that includes:

31 (a) The taxpayer's name, address, tax identification number and evidence of the
32 taxpayer's certification as a qualified community development entity.

33 (b) A copy of an allocation agreement executed by the entity, or its controlling entity,
34 and the Community Development Financial Institutions Fund that includes the State of
35 Oregon in its service area.

36 (c) A certificate executed by an executive officer of the entity attesting that the allo-
37 cation agreement remains in effect and has not been revoked or canceled by the Community
38 Development Financial Institutions Fund.

39 (d) A description of the proposed purchase price, structure and purchaser of the equity
40 investment or long-term debt security.

41 (e) The name and tax identification number of any person eligible to claim a tax credit,
42 under section 4 of this 2011 Act, allowed as a result of the certification of the qualified equity
43 investment.

44 (f) Information regarding the proposed use of proceeds from the issuance of the qualified
45 equity investment.

1 (g) A nonrefundable application fee of \$5,000. This fee shall be paid to the department and
2 shall be required for each application submitted.

3 (2) Within 15 days after receipt of a completed application containing the information
4 necessary for the department to certify a proposed equity investment, including the payment
5 of the application fee, the department shall grant or deny the application in full or in part.
6 If the department denies any part of the application, the department shall inform the quali-
7 fied community development entity of the grounds for the denial. If the qualified community
8 development entity provides any additional information required by the department or oth-
9 erwise completes its application within 15 days after the notice of denial, the application shall
10 be considered completed as of the original date of submission. If the qualified community
11 development entity fails to provide the information or complete its application within the
12 15-day period, the application remains denied and must be resubmitted in full with a new
13 submission date.

14 (3) If the application is deemed complete, the department shall certify the proposed eq-
15 uity investment or long-term debt security as a qualified equity investment and eligible for
16 a tax credit under section 4 of this 2011 Act, subject to the limitations in section 5 of this
17 2011 Act. The department shall provide written notice of the certification to the qualified
18 community development entity. The notice shall include the names of those taxpayers who
19 are eligible to utilize the credits and their respective credit amounts. If the names of the
20 persons or entities that are eligible to utilize the credits change due to a transfer of a qual-
21 ified equity investment or a change in an allocation pursuant to section 5 of this 2011 Act,
22 the qualified community development entity shall notify the department of the change.

23 (4) Within 60 days after receiving notice of certification, the qualified community devel-
24 opment entity shall issue the qualified equity investment and receive cash in the amount of
25 the certified purchase price. The qualified community development entity must provide the
26 department with evidence of the receipt of the cash investment within 10 business days after
27 receipt. If the qualified community development entity does not receive the cash investment
28 and issue the qualified equity investment within 60 days following receipt of the certification
29 notice, the certification shall lapse and the entity may not issue the qualified equity invest-
30 ment without reapplying to the department for certification. A certification that lapses re-
31 verts to the department and may be reissued only in accordance with the application process
32 outlined in this section.

33 (5) The department shall certify qualified equity investments in the order applications are
34 received by the department. Applications received on the same day shall be deemed to have
35 been received simultaneously. For applications received on the same day and deemed com-
36 plete, the department shall certify, consistent with remaining tax credit capacity, qualified
37 equity investments in proportionate percentages based upon the ratio of the amount of
38 qualified equity investment requested in an application to the total amount of qualified equity
39 investments requested in all applications received on the same day. If a pending request
40 cannot be fully certified because of the limitation in section 7 of this 2011 Act, the depart-
41 ment shall certify the portion that may be certified unless the qualified community develop-
42 ment entity elects to withdraw its request rather than receive partial credit.

43 (6) A qualified community development entity that is certified under this section shall
44 pay an annual evaluation fee of \$1,000 to the department.

45 (7) The department shall establish by rule procedures to administer the provisions of this

1 section, including the allocation of tax credits issued for qualified equity investments.

2 **SECTION 7.** (1) Once the Oregon Business Development Department has certified a cu-
3 mulative amount of qualified equity investments that can result in the utilization of \$16
4 million of tax credits in any tax year, the department may not certify any more qualified
5 equity investments under section 6 of this 2011 Act. This limitation shall be based on the
6 scheduled utilization of tax credits without regard to the potential for taxpayers to carry
7 forward tax credits to later tax years.

8 (2) The department shall reserve 15 percent of the total amount of qualified equity in-
9 vestments that receive certification under section 6 of this 2011 Act for investments in
10 qualified active low-income community businesses that:

11 (a) Have a primary purpose of improving the environment or reducing emissions of
12 greenhouse gases; or

13 (b) Produce goods that directly reduce emissions of greenhouse gases or are designed as
14 environmentally sensitive replacements for products in current use.

15 (3) The department shall establish by rule procedures and criteria for implementing the
16 provisions of this section.

17 **SECTION 8.** (1) The Department of Revenue may recapture any portion of a tax credit
18 allowed under section 4 of this 2011 Act if:

19 (a) Any amount of federal tax credit that might be available with respect to the qualified
20 equity investment that generated the tax credit under section 4 of this 2011 Act is recaptured
21 under section 45D of the Internal Revenue Code. The department's recapture shall be
22 proportionate to the federal recapture with respect to the qualified equity investment.

23 (b) The qualified community development entity redeems or makes a principal repayment
24 with respect to the qualified equity investment that generated the tax credit prior to the
25 final credit allowance date of the qualified equity investment. The department's recapture
26 shall be proportionate to the amount of the redemption or repayment with respect to the
27 qualified equity investment.

28 (c) The qualified community development entity fails to invest at least 85 percent of the
29 purchase price of the qualified equity investment in qualified low-income community invest-
30 ments within 12 months of the issuance of the qualified equity investment and maintain the
31 same level of investment in qualified low-income community investments until the last credit
32 allowance date for the qualified equity investment. For purposes of calculating the amount
33 of qualified low-income community investments held by a qualified community development
34 entity, an investment shall be considered held by the entity even if the investment has been
35 sold or repaid provided that the entity reinvests an amount equal to the capital returned to
36 or recovered from the original investment, exclusive of any profits realized, in another
37 qualified active low-income community business in this state within 12 months of the receipt
38 of the capital. A qualified community development entity may not be required to reinvest
39 capital returned from qualified low-income community investments after the sixth anniver-
40 sary of the issuance of the qualified equity investment, the proceeds of which were used to
41 make the qualified low-income community investment, and the qualified low-income com-
42 munity investment shall be considered held by the issuer through the qualified equity
43 investment's final credit allowance date.

44 (2) The department shall provide notice to the qualified community development entity
45 of any proposed recapture of tax credits pursuant to this section. The entity shall have 90

1 **days to cure any deficiency indicated in the department's original recapture notice and avoid**
 2 **the recapture. If the entity fails or is unable to cure the deficiency within the 90-day period,**
 3 **the department shall provide the entity and the taxpayer from whom the credit is to be re-**
 4 **captured with a final order of recapture. Any tax credit for which a final recapture order**
 5 **has been issued shall be recaptured by the department from the taxpayer who claimed the**
 6 **tax credit on a tax return.**

7 **SECTION 9.** ORS 314.752, as amended by section 26, chapter 76, Oregon Laws 2010, is amended
 8 to read:

9 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
 10 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
 11 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
 12 allowable to the shareholders of the S corporation.

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

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

22 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
 23 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
 24 316.117, then that provision shall apply to the nonresident shareholder.

25 (5) As used in this section, "business tax credit" means a tax credit granted to personal income
 26 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive
 27 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-
 28 section as a business tax credit or is designated as a business tax credit by law or by the Depart-
 29 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309
 30 (tribal taxes on reservation enterprise zones and reservation partnership zones), ORS 315.104 (fore-
 31 station and reforestation), ORS 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-
 32 pass devices, fishways), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing),
 33 ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (con-
 34 tributions for child care), ORS 315.304 (pollution control facility), ORS 315.324 (plastics recycling),
 35 ORS 315.354 and 469.207 (energy conservation facilities), ORS 315.507 (electronic commerce), ORS
 36 315.511 (advanced telecommunications facilities), ORS 315.604 (bone marrow transplant expenses),
 37 ORS 317.115 (fueling stations necessary to operate an alternative fuel vehicle) and ORS 315.141
 38 (biomass production for biofuel) **and section 4 of this 2011 Act (new markets tax credit).**

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

40 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter
 41 317 shall be administered as uniformly as possible (allowance being made for the difference in im-
 42 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-
 43 corporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.134, 315.141, 315.156,
 44 315.204, 315.208, 315.213, 315.304, 315.507, 315.511 and 315.604 **and section 4 of this 2011 Act** (all
 45 only to the extent applicable to a corporation) and ORS chapter 317.

1 **SECTION 11.** Sections 2 to 8 of this 2011 Act and the amendments to ORS 314.752 and
2 318.031 by sections 9 and 10 of this 2011 Act apply to qualified equity investments made on
3 or after July 1, 2012.

4 **SECTION 12.** This 2011 Act takes effect on the 91st day after the date on which the 2011
5 session of the Seventy-sixth Legislative Assembly adjourns sine die.
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