

A-Engrossed
House Bill 4200

Ordered by the House December 14
Including House Amendments dated December 14

Sponsored by JOINT SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT

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.

Authorizes Governor, **in consultation with Director of Oregon Business Development Department** and Director of Department of Revenue, to enter into qualifying investment contracts with taxpayers that promise to make certain investments. Contractually obligates state to allow contracting taxpayers to apportion business income for tax purposes using single sales factor method. Establishes minimum and maximum terms of qualifying investment contracts and other minimum requirements for contracts. Provides remedies for state in action for breach of contract. **Directs Oregon Business Development Department to report to Legislative Assembly regarding progress of qualifying investment contracts, including taxpayer compliance with employment requirement.**

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to economic development; and prescribing an effective date.

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

4 **SECTION 1. Sections 3 to 6 of this 2012 special session Act are added to and made a part**
5 **of ORS 314.605 to 314.675.**

6 **NOTE:** Section 2 was deleted by amendment. Subsequent sections were not renumbered.

7 **SECTION 3. As used in sections 3 to 6 of this 2012 special session Act:**

8 (1) "Actual cost" means the costs of labor, materials, supplies, equipment rental, real or
9 personal property acquisition, permits, engineering, financing, required fees, insurance, ad-
10 ministration, accounting, maintenance, repair or replacement and debt service, and all other
11 direct or indirect costs incurred by a person in order to undertake a capital project, or of
12 more than one capital project undertaken by the same taxpayer as part of the same quali-
13 fying investment.

14 (2) "Capital project" means a project within this state for the construction, modification,
15 replacement, repair, remodeling or renovation of a structure or structures, addition to a
16 structure or structures, or other capital improvement, that qualifies as a qualifying invest-
17 ment, including but not limited to:

18 (a) Acquisition of a legal interest or right in land or property in conjunction with the
19 capital improvement, including but not limited to the purchase, lease or occupancy of real
20 property, including the buildings, structures, infrastructure and leasehold improvements on
21 the land or property;

22 (b) Acquisition of existing structures, or legal interests or rights in structures, in con-
23 junction with the capital improvement;

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 (c) Acquisition and installation of machinery or equipment, furnishings, fixtures or other
2 personal property or materials, in conjunction with the capital improvement; or

3 (d) Services and activities performed in relation to the capital improvement, including
4 planning, design, authorizing, issuing, carrying or repaying interim or permanent financing,
5 research, study of land use and environmental impacts, acquiring permits or licenses, or
6 other services connected with the capital improvement, and costs associated with the per-
7 formance of these services and activities.

8 (3) "Debt service" includes debt service payments or payments into reserve accounts for
9 debt service and payment of amounts necessary to meet debt service coverage requirements.

10 (4) "Qualifying investment" means expenditures made by the taxpayer relating to a cap-
11 ital project:

12 (a) The actual cost of which exceeds \$150 million within a five-year period measured from
13 the commencement of the term of the qualifying investment contract; and

14 (b) That result in the taxpayer employing at least 500 more full-time equivalent employ-
15 ees in this state than the taxpayer employed in this state when the qualifying investment
16 was commenced.

17 (5) "Qualifying investment contract" means a contract between the State of Oregon and
18 a taxpayer that meets the requirements of section 5 of this 2012 special session Act.

19 (6) "Single sales factor method" means the method of business income apportionment
20 required under ORS 314.650 and 314.665 and the rules adopted thereunder, as in effect on the
21 date a qualifying investment contract is executed.

22 (7) "Term of the qualifying investment contract" means the duration of the parties' ob-
23 ligations under a qualifying investment contract.

24 **SECTION 4. (1) The Legislative Assembly finds that:**

25 (a) The State of Oregon has a compelling interest in promoting and stimulating economic
26 development within this state to better provide for the welfare of its residents, in encour-
27 aging businesses to make significant capital investments within this state and in creating
28 certainty in the apportionment of business income for purposes of income and corporate
29 excise taxation that achieves these ends;

30 (b) Use of the single sales factor method to apportion business income promotes an eco-
31 nomic development climate that encourages businesses to locate and remain within this
32 state, encourages existing Oregon businesses to expand their operations in Oregon and cre-
33 ates incentives for businesses to make significant capital investments within this state;

34 (c) Qualifying investments will create significant, long-term economic benefits and serve
35 as the catalyst for additional economic expansion within the State of Oregon;

36 (d) It is in the interest of the State of Oregon to authorize the Governor, in consultation
37 with the Director of the Oregon Business Development Department and the Director of the
38 Department of Revenue, to enter into qualifying investment contracts for purposes of stim-
39 ulating economic development through qualifying investments;

40 (e) In consideration for making qualifying investments, taxpayers should be entitled to
41 rely on the continued application of the single sales factor method to apportion their busi-
42 ness income for tax purposes;

43 (f) Factors to be considered in determining the duration of the term of a qualifying in-
44 vestment contract should include, without limitation, the number of new employees to be
45 added to the Oregon workforce of the taxpayer when the qualifying investment is complete,

1 the duration and compensation of the new jobs created, other economic development incen-
2 tives received by the company and the extent to which the qualifying investment will create
3 employment opportunities in rural Oregon; and

4 (g) The State of Oregon has a compelling interest in contractually guaranteeing to tax-
5 payers making qualifying investments that such taxpayers may rely on the single sales factor
6 method as the applicable method to determine the portion of business income subject to in-
7 come or corporate excise tax in the State of Oregon.

8 (2) The purposes of sections 3 to 6 of this 2012 special session Act are:

9 (a) To promote and stimulate economic development by creating an incentive for quali-
10 fying investments;

11 (b) To authorize the Governor, in consultation with the Director of the Oregon Business
12 Development Department and the Director of the Department of Revenue, to enter into
13 qualifying investment contracts on behalf of this state; and

14 (c) To ratify any qualifying investment contracts entered into on or after December 14,
15 2012.

16 (3) The intent of the Legislative Assembly is for sections 3 to 6 of this 2012 special session
17 Act to establish a contractually binding obligation under which taxpayers that execute qual-
18 ifying investment contracts with the State of Oregon may rely on the single sales factor
19 method of apportionment to apportion their business income for each tax year of the tax-
20 payer that ends during the term of the qualifying investment contract.

21 **SECTION 5.** (1) The Governor, in consultation with the Director of the Oregon Business
22 Development Department and the Director of the Department of Revenue, may enter into,
23 on behalf of the State of Oregon, a qualifying investment contract with any taxpayer ac-
24 cording to the provisions of sections 3 to 6 of this 2012 special session Act.

25 (2) Any contract executed pursuant to subsection (1) of this section on or after December
26 14, 2012, and before the effective date of this 2012 special session Act that meets the re-
27 quirements of a qualifying investment contract is ratified by sections 3 to 6 of this 2012
28 special session Act.

29 (3) A taxpayer may not satisfy the requirement that a qualifying investment result in an
30 increase in the number of employees of the taxpayer by gain of another entity's existing
31 Oregon employees through a merger or acquisition of any portion of that entity.

32 (4) A qualifying investment contract executed under sections 3 to 6 of this 2012 special
33 session Act may not be less than five years' duration and may not exceed 30 years' duration.

34 (5) The obligations of the State of Oregon under a qualifying investment contract:

35 (a) Include the promise of this state that, if the taxpayer commences a qualifying in-
36 vestment, the taxpayer's Oregon business income tax liability may not exceed the amount
37 the taxpayer would pay or owe under the single sales factor method for each tax year that
38 ends during the term of the qualifying investment contract; and

39 (b) May not be abridged, impaired, limited or modified by any subsequent law.

40 (6) If a taxpayer that has executed a qualifying investment contract files a report or re-
41 turn with the Department of Revenue for a tax year ending during the term of the qualifying
42 investment contract and reporting personal income taxes or corporate excise or income
43 taxes imposed under ORS chapter 316, 317 or 318, that are determined in whole or part by
44 apportioning business income using the single sales factor method, the department may not
45 assess a deficiency against the taxpayer that is attributable to the use of a different method

1 of apportionment.

2 (7) An action for a breach of a qualifying investment contract may be brought against
3 the State of Oregon.

4 (8) The sole and exclusive remedies for the State of Oregon in an action for breach of a
5 qualifying investment contract brought by the state shall be:

6 (a) A judgment rescinding the qualifying investment contract; and

7 (b) A judgment awarding an amount equal to the difference, if any, between:

8 (A) The amount of taxes due from the taxpayer under the single sales factor method
9 from the date of breach through termination of the qualifying investment contract; and

10 (B) The amount of taxes due from the taxpayer during the same period using the method
11 of apportioning business income:

12 (i) Under the tax laws that would have applied to the taxpayer but for the qualifying in-
13 vestment contract; or

14 (ii) Identified in the judgment as fairly representing the extent of the taxpayer's business
15 activity in this state.

16 **SECTION 6.** (1) The Oregon Business Development Department may, after consultation
17 with the Department of Revenue, adopt rules to implement sections 3 to 6 of this 2012 special
18 session Act, including rules that define terms consistently with sections 3 to 6 of this 2012
19 special session Act. Rules adopted under this section apply only to qualifying investment
20 contracts executed on or after the date the rule is adopted.

21 (2) On or before February 15 of each odd-numbered year, the Oregon Business Develop-
22 ment Department shall report to the Legislative Assembly in the manner provided in ORS
23 192.245 regarding the progress of qualifying investment contracts executed under sections 3
24 to 6 of this 2012 special session Act, including whether each taxpayer subject to a qualifying
25 investment contract has complied with the employment requirement under section 3 (4) of
26 this 2012 special session Act.

27 **SECTION 7.** A qualifying investment contract as defined in section 3 of this 2012 special
28 session Act may not be entered into:

29 (1) Before December 14, 2012.

30 (2) On or after January 1, 2014.

31 **SECTION 8.** This 2012 special session Act takes effect on the 91st day after the date on
32 which the special session of the Seventy-sixth Legislative Assembly adjourns sine die.
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