76th OREGON LEGISLATIVE ASSEMBLY--2012 Special Session

House Bill 4200

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 **as introduced.**

Authorizes Governor 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.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to economic development; and prescribing an effective date.

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

SECTION 1. Sections 2 to 6 of this 2012 special session Act are added to and made a part of ORS 314.605 to 314.675.

SECTION 2. Sections 2 to 6 of this 2012 special session Act shall be known and may be cited as the Qualifying Investment Incentive and Safe Harbor Act.

SECTION 3. As used in sections 2 to 6 of this 2012 special session Act:

(1) "Actual cost" means the costs of labor, materials, supplies, equipment rental, real, intellectual or personal property acquisition, permits, engineering, financing, required fees, insurance, administration, accounting, depreciation, amortization, maintenance, repair or replacement and debt service, and all other direct or indirect costs incurred by a person in order to undertake a capital project, or of more than one capital project undertaken by the same taxpayer as part of the same qualifying investment.

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

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

(b) Acquisition of existing structures, or legal interests or rights in structures, in conjunction with the capital improvement;

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

(d) Services and activities performed in relation to the capital improvement, including planning, design, authorizing, issuing, carrying or repaying interim or permanent financing, research, study of land use and environmental impacts, acquiring permits or licenses, or

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.

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other services connected with the capital improvement, and costs associated with the performance of these services and activities.

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

(4) "Qualifying investment" means expenditures made by the taxpayer relating to a capital project:

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

(b) For which the taxpayer has not received savings in property tax costs greater than $5 million under the strategic investment program established in ORS 285C.600 to 285C.626, 285C.635 and 285C.639, without regard to any fees or other costs incurred by the taxpayer for participating in the program; and

(c) That result in the taxpayer employing at least 500 more full-time equivalent employees in this state than the taxpayer employed in this state when the qualifying investment was commenced.

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

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

(7) "Term of the qualifying investment contract" means the duration of the parties' obligations under a qualifying investment contract.

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

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

(b) Use of the single sales factor method to apportion business income promotes an economic development climate that encourages businesses to locate and remain within this state, encourages existing Oregon businesses to expand their operations in Oregon and creates incentives for businesses to make significant capital investments within this state;

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

(d) It is in the interest of the State of Oregon to authorize the Governor and the Director of the Department of Revenue to enter into qualifying investment contracts for purposes of stimulating economic development through qualifying investments;

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

(f) Factors to be considered in determining the duration of the term of a qualifying investment contract should include, without limitation, the cost of any existing capital investments owned or leased by the taxpayer in Oregon before the qualifying investment is commenced, the number of new employees to be added to the Oregon work force of the taxpayer when the qualifying investment is complete, the extent to which the wages and

salaries of new employees exceed Oregon wage and salary averages and the extent to which the qualifying investment will create employment opportunities in rural Oregon; and

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

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

(a) To promote and stimulate economic development by creating an incentive for qualifying investments;

(b) To authorize the Governor and the director to enter into qualifying investment contracts on behalf of this state; and

(c) To ratify any qualifying investment contracts entered into on or after December 1, 2012.

(3) The intent of the Legislative Assembly is for sections 2 to 6 of this 2012 special session Act to establish a contractually binding obligation under which taxpayers that execute qualifying investment contracts with the State of Oregon may rely on the single sales factor method of apportionment to apportion their business income for each tax year of the taxpayer that ends during the term of the qualifying investment contract.

SECTION 5. (1) The Governor and the Director of the Department of Revenue may enter into, on behalf of the State of Oregon, a qualifying investment contract with any taxpayer according to the provisions of sections 2 to 6 of this 2012 special session Act.

(2) Any contract executed pursuant to subsection (1) of this section on or after December 1, 2012, and before the effective date of this 2012 special session Act that meets the requirements of a qualifying investment contract is ratified by sections 2 to 6 of this 2012 special session Act.

(3) A qualifying investment contract executed under sections 2 to 6 of this 2012 special session Act may not be less than five years' duration and may not exceed 40 years' duration.

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

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

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

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

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

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

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

(b) A judgment awarding an amount not to exceed the difference, if any, between:

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

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

(i) Under the tax laws otherwise applicable to the taxpayer during the period; or

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

SECTION 6. The Oregon Business Development Department may, after consultation with the Department of Revenue, adopt rules to implement sections 2 to 6 of this 2012 special session Act, including rules that define terms consistently with sections 2 to 6 of this 2012 special session Act. Rules adopted under this section apply only to qualifying investment contracts executed on or after the date the rule is adopted.

SECTION 7. A qualifying investment contract as defined in section 3 of this 2012 special session Act may not be entered into on or after January 1, 2023.

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