

Enrolled
House Bill 2763

Sponsored by COMMITTEE ON TRANSPORTATION AND ECONOMIC DEVELOPMENT

CHAPTER

AN ACT

Relating to economic development; creating new provisions; amending ORS 285C.650, 315.533 and 731.854; and prescribing an effective date.

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

SECTION 1. ORS 315.533 is amended to read:

315.533. (1) As used in this section, “applicable percentage” means zero percent for each of the first two credit allowance dates, seven percent for the third credit allowance date and eight percent for the next four credit allowance dates.

(2) A person that makes a qualified equity investment shall, at the time of investment, earn a vested credit against the taxes otherwise due under ORS chapter 316 or, if the person is a corporation, under ORS chapter 317 or 318.

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

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

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

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

(5) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer’s tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year. Any credit remaining unused in the second succeeding tax year may be carried forward and used in the third succeeding tax year. Any credit remaining unused in the third succeeding tax year may be carried forward and used in the fourth succeeding tax year. Any credit remaining unused in the fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be used in any tax year thereafter.

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

(a) A qualified community development entity that issues a debt instrument may not make cash interest payments on the debt instrument during the period commencing with its issuance and end-

ing on its final credit allowance date in excess of the sum of the cash interest payments and the cumulative operating income, as defined in the regulations promulgated under section 45D of the Internal Revenue Code, of the qualified community development entity for the same period. Neither this paragraph nor the definition of “long-term debt security” provided in ORS 315.529 in any way limits the holder’s ability to accelerate payments on the debt instrument in situations where the qualified community development entity has defaulted on covenants designed to ensure compliance with this section or section 45D of the Internal Revenue Code.

(b) A business shall be considered a qualified active low-income community business for the duration of a qualified community development entity’s investment in or loan to the business, if it is reasonable to expect that at the time of the qualified community development entity’s investment in or loan to a qualified active low-income community business, the business will continue to satisfy the requirements for being a qualified active low-income community business throughout the entire period of the investment or loan.

(c) A qualified equity investment must be designated by the issuer as a qualified equity investment and be certified by the Oregon Business Development Department as not exceeding the limitation in ORS 285C.653. The qualified community development entity must keep sufficiently detailed books and records with respect to the investments made with the proceeds of the qualified equity investments to allow the direct tracing of proceeds into qualified low-income community investments in qualified active low-income community businesses in this state.

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

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

(B) The average annual salary of positions described in subparagraph (A) of this paragraph; and

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

(e) The maximum amount of qualified low-income community investments that may be made in a qualified active low-income community business and all of its affiliates, with the proceeds of qualified equity investments that have been certified under ORS 285C.650, shall be [~~\$4 million~~] **\$8 million**, whether made by one or several qualified community development entities.

(f) A qualified equity investment must be made before July 1, 2016. Nothing in this paragraph precludes an entity that makes a qualified equity investment prior to July 1, 2016, from claiming a tax credit relating to that qualified equity investment for each applicable credit allowance date.

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

SECTION 1a. The amendments to ORS 315.533 by section 1 of this 2013 Act apply to qualified low-income community investments made on or after January 1, 2014.

SECTION 2. ORS 285C.650 is amended to read:

285C.650. (1) A qualified community development entity that seeks to have an equity investment or long-term debt security certified as a qualified equity investment and eligible for a tax credit under ORS 315.533 shall apply to the Oregon Business Development Department. The department shall establish by rule application procedures for applications for certification. The entity must submit an application on a form that the department provides that includes:

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

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

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

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

(e) The name and tax identification number of any person eligible to claim a tax credit, under ORS 315.533, allowed as a result of the certification of the qualified equity investment.

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

(g) A nonrefundable application fee of \$20,000. This fee shall be paid to the department and shall be required for each application submitted.

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

(3) If the application is deemed complete, the department shall certify the proposed equity investment or long-term debt security as a qualified equity investment and eligible for a tax credit under ORS 315.533, subject to the limitations in ORS 315.536. The department shall provide written notice of the certification to the qualified community development entity. The notice shall include the names of those taxpayers who are eligible to utilize the credits and their respective credit amounts. If the names of the persons or entities that are eligible to utilize the credits change due to a transfer of a qualified equity investment or a change in an allocation pursuant to ORS 315.536, the qualified community development entity shall notify the department of the change.

(4)(a) **Except as provided in paragraph (b) of this subsection**, within 60 days after receiving notice of certification, *[the]* a qualified community development entity shall issue the qualified equity investment and receive cash in the amount of the certified purchase price. The qualified community development entity must provide the department with evidence of the receipt of the cash investment within 10 business days after receipt.

(b) For a qualified equity investment described in ORS 285C.653 (2), a qualified community development entity shall issue the qualified equity investment during the period beginning July 1, 2012, and ending 60 days after receiving notice of certification. If the qualified equity investment is issued prior to the submission of an application for certification under this section, the qualified community development entity must provide the department with evidence of the qualified equity investment and of receipt of the cash investment at the time of application for certification.

(c) If *[the]* a qualified community development entity does not receive the cash investment and issue the qualified equity investment *[within 60 days]* **on or before the 60th day** following receipt of the certification notice, the certification shall lapse and the entity may not issue the qualified equity investment without reapplying to the department for certification. A certification that lapses reverts to the department and may be reissued only in accordance with the application process outlined in this section.

(5) The department shall certify qualified equity investments in the order applications are received by the department. Applications received on the same day shall be deemed to have been received simultaneously. For applications received on the same day and deemed complete, the department shall certify, consistent with remaining tax credit capacity, qualified equity investments in proportionate percentages based upon the ratio of the amount of qualified equity investment requested in an application to the total amount of qualified equity investments requested in all applications received on the same day. If a pending request cannot be fully certified because of the limitation in ORS 285C.653, the department shall certify the portion that may be certified unless the

qualified community development entity elects to withdraw its request rather than receive partial credit.

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

(7) The department shall establish by rule procedures to administer the provisions of this section, including the allocation of tax credits issued for qualified equity investments.

SECTION 3. The amendments to ORS 285C.650 by section 2 of this 2013 Act apply to qualified equity investments made on or after July 1, 2012.

SECTION 4. ORS 731.854 is amended to read:

731.854. (1) When by or pursuant to the laws of any other state or foreign country any taxes, licenses and other fees, in the aggregate, and any fines, penalties, deposit requirements or other material obligations, prohibitions or restrictions are or would be imposed upon insurers domiciled in this state, or upon the insurance producers or representatives of such insurers, which are in excess of such taxes, licenses and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements or other obligations, prohibitions, or restrictions directly imposed upon similar insurers, or upon the insurance producers or representatives of such insurers, of such other state or country under the statutes of this state, so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate, or fines, penalties or deposit requirements or other material obligations, prohibitions, or restrictions of whatever kind shall be imposed by the Director of the Department of Consumer and Business Services upon the insurers, or upon the insurance producers or representatives of such insurers, of such other state or country doing business or seeking to do business in this state. Any tax, license or other fee or other obligation imposed by any city, county, or other political subdivision or agency of such other state or country on insurers domiciled in this state or their insurance producers or representatives shall be deemed to be imposed by such state or country within the meaning of this subsection.

(2) Foreign reciprocal or interinsurance exchanges filing a consolidated return for purposes of ORS chapter 317 shall prepare and file a separate individual retaliatory tax calculation. The excise tax for the consolidated group shall be allocated for retaliatory tax purposes among the individual foreign insurers writing Oregon premiums. The allocation, after excluding the domestic share as determined by the Director of the Department of Consumer and Business Services by rule, shall be in the proportion that the premiums written in Oregon by a foreign insurer of the group bears to the total premiums written in Oregon by all foreign insurers in the group writing premiums in Oregon.

(3) This section does not apply as to personal income taxes, nor as to local ad valorem taxes on real or personal property nor as to special purpose obligations or assessments heretofore imposed by another state in connection with particular classes of insurance, other than property insurance; except that deductions, from premium taxes or other taxes otherwise payable, allowed on account of real estate or personal property taxes paid shall be taken into consideration by the director in determining the propriety and extent of retaliatory action under this section.

(4) For the purpose of applying this section to an alien insurer, its domicile shall be determined in accordance with ORS 731.092 and 731.096.

(5) For the purpose of applying this section to foreign and alien insurers, the following specifically shall be treated as taxes imposed by this state:

(a) The corporate excise tax imposed under ORS chapter 317, **without taking into consideration the amount of any reduction due to the credit allowed under ORS 315.533.**

(b) The assessments imposed under ORS 731.804 made to support the legislatively authorized budget of the Department of Consumer and Business Services with respect to the functions of the department under the Insurance Code.

(c) The assessments paid by insurers on behalf of their insureds under ORS 656.612.

SECTION 5. The amendments to ORS 731.854 by section 4 of this 2013 Act apply to tax years beginning on or after January 1, 2013.

SECTION 6. (1) The Oregon Business Development Department shall annually prepare a report that discloses all costs and fees incurred by the department, or by any other state agency, in administering, during the agency fiscal year ending during the current calendar year, the tax credit allowed under ORS 315.533.

(2) The report required under this section shall also provide information about qualified equity investments issued on or after July 1, 2013, including, for the previous calendar year and for tax years ending during the previous calendar year:

(a) The amount of tax credit allowed for the qualified equity investments under ORS 315.533;

(b) The amount of tax credit claimed for the qualified equity investments under ORS 315.533;

(c) The costs and expenses of forming the qualified community development entities that issued the qualified equity investments, including but not limited to fees paid for professional services, including legal and accounting services, related to the formation and operation of the entities; and

(d) Information with respect to qualified equity investments and qualified low-income community investments that would be reported as part of the institution level report and transaction level reports submitted by qualified community development entities pursuant to section 45D of the Internal Revenue Code.

(3) The Oregon Business Development Department shall submit the report required under this section to the Oregon Department of Administrative Services no later than 30 days following the effective date of this 2013 Act and, beginning in 2014, no later than September 30 of each year. The information shall then be posted on the Oregon transparency website required under ORS 184.483 no later than December 31 of the same year.

(4) The information described in this section that is available on the Oregon transparency website must be accessible in the format and manner required by the Oregon Department of Administrative Services.

(5) The Oregon Business Development Department shall collect data sufficient for the purpose of preparing the report required under this section.

(6) For purposes of this section, the Oregon Business Development Department may not collect or report proprietary information related to a taxpayer, taxpayers holding qualified equity investments, qualified community development entities or qualified active low-income community businesses, or information about the specific terms of financial agreements pertaining to any project.

SECTION 7. This 2013 Act takes effect on the 91st day after the date on which the 2013 regular session of the Seventy-seventh Legislative Assembly adjourns sine die.

Passed by House April 10, 2013

Repassed by House June 28, 2013

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 28, 2013

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2013

Approved:

.....M,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

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Kate Brown, Secretary of State