

B-Engrossed
House Bill 2763

Ordered by the Senate June 3
Including House Amendments dated April 8 and Senate Amendments
dated June 3

Sponsored by COMMITTEE ON TRANSPORTATION AND 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.

[Directs Oregon Business Development Department to conduct review of all statutory laws governing business finance programs to determine needed changes to laws. Requires department to report on review and findings to Legislative Assembly no later than October 15, 2013.]

[Declares emergency, effective on passage.]

For purposes of tax credit allowed for qualified equity investment, allows taxpayer to claim less than full amount of credit. Increases maximum amount of qualified low-income community investments that may be made with proceeds of qualified equity investments that are certified for tax credit. Provides that reduction in corporate excise tax through application of credit allowed for qualified equity investment is not considered in calculation of retaliatory tax imposed against insurer. Establishes timeframe during which qualified equity investment may be issued.

Applies to investments made on or after July 1, 2012, and to tax years beginning on or after January 1, 2013.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to economic development; creating new provisions; amending ORS 285C.650, 315.533 and
3 731.854; and prescribing an effective date.

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

5 **SECTION 1.** ORS 315.533 is amended to read:

6 315.533. (1) As used in this section, "applicable percentage" means zero percent for each of the
7 first two credit allowance dates, seven percent for the third credit allowance date and eight percent
8 for the next four credit allowance dates.

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

12 (3)(a) The total amount of the tax credit available to a taxpayer under this section shall equal
13 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 date
15 of the qualified equity investment may claim a portion of the tax credit against its tax liability for
16 the tax year that includes the credit allowance date equal to the applicable percentage for that
17 credit allowance date multiplied by the purchase price of the qualified equity investment.

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

20 **(b) Notwithstanding ORS 314.078, a taxpayer may elect to claim less than the full amount**

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 **of the credit allowed under this section.**

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

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

7 (a) A qualified community development entity that issues a debt instrument may not make cash
8 interest payments on the debt instrument during the period commencing with its issuance and end-
9 ing on its final credit allowance date in excess of the sum of the cash interest payments and the
10 cumulative operating income, as defined in the regulations promulgated under section 45D of the
11 Internal Revenue Code, of the qualified community development entity for the same period. Neither
12 this paragraph nor the definition of "long-term debt security" provided in ORS 315.529 in any way
13 limits the holder's ability to accelerate payments on the debt instrument in situations where the
14 qualified community development entity has defaulted on covenants designed to ensure compliance
15 with this section or section 45D of the Internal Revenue Code.

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

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

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

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

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

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

34 (e) The maximum amount of qualified low-income community investments that may be made in
35 a qualified active low-income community business and all of its affiliates, with the proceeds of
36 qualified equity investments that have been certified under ORS 285C.650, shall be [~~\$4 million~~] **\$10**
37 **million**, whether made by one or several qualified community development entities.

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

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

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

45 285C.650. (1) A qualified community development entity that seeks to have an equity investment

1 or long-term debt security certified as a qualified equity investment and eligible for a tax credit
2 under ORS 315.533 shall apply to the Oregon Business Development Department. The department
3 shall establish by rule application procedures for applications for certification. The entity must
4 submit an application on a form that the department provides that includes:

5 (a) The entity's name, address, tax identification number and evidence of the entity's certif-
6 ication as a qualified community development entity.

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

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

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

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

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

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

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

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

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

44 **(b) For a qualified equity investment described in ORS 285C.653 (2), a qualified community**
45 **development entity shall issue the qualified equity investment during the period beginning**

1 **July 1, 2012, and ending 60 days after receiving notice of certification. If the qualified equity**
2 **investment is issued prior to the submission of an application for certification under this**
3 **section, the qualified community development entity must provide the department with evi-**
4 **dence of the qualified equity investment and of receipt of the cash investment at the time**
5 **of application for certification.**

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

12 (5) The department shall certify qualified equity investments in the order applications are re-
13 ceived by the department. Applications received on the same day shall be deemed to have been
14 received simultaneously. For applications received on the same day and deemed complete, the de-
15 partment shall certify, consistent with remaining tax credit capacity, qualified equity investments
16 in proportionate percentages based upon the ratio of the amount of qualified equity investment re-
17 quested in an application to the total amount of qualified equity investments requested in all appli-
18 cations received on the same day. If a pending request cannot be fully certified because of the
19 limitation in ORS 285C.653, the department shall certify the portion that may be certified unless the
20 qualified community development entity elects to withdraw its request rather than receive partial
21 credit.

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

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

26 **SECTION 3. The amendments to ORS 285C.650 and 315.533 by sections 1 and 2 of this 2013**
27 **Act apply to qualified equity investments made on or after July 1, 2012.**

28 **SECTION 4.** ORS 731.854 is amended to read:

29 731.854. (1) When by or pursuant to the laws of any other state or foreign country any taxes,
30 licenses and other fees, in the aggregate, and any fines, penalties, deposit requirements or other
31 material obligations, prohibitions or restrictions are or would be imposed upon insurers domiciled
32 in this state, or upon the insurance producers or representatives of such insurers, which are in ex-
33 cess of such taxes, licenses and other fees, in the aggregate, or which are in excess of the fines,
34 penalties, deposit requirements or other obligations, prohibitions, or restrictions directly imposed
35 upon similar insurers, or upon the insurance producers or representatives of such insurers, of such
36 other state or country under the statutes of this state, so long as such laws of such other state or
37 country continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate,
38 or fines, penalties or deposit requirements or other material obligations, prohibitions, or restrictions
39 of whatever kind shall be imposed by the Director of the Department of Consumer and Business
40 Services upon the insurers, or upon the insurance producers or representatives of such insurers, of
41 such other state or country doing business or seeking to do business in this state. Any tax, license
42 or other fee or other obligation imposed by any city, county, or other political subdivision or agency
43 of such other state or country on insurers domiciled in this state or their insurance producers or
44 representatives shall be deemed to be imposed by such state or country within the meaning of this
45 subsection.

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

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

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

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

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

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

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

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

27 **SECTION 6. This 2013 Act takes effect on the 91st day after the date on which the 2013**
28 **regular session of the Seventy-seventh Legislative Assembly adjourns sine die.**

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