

SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 2763

By COMMITTEE ON BUSINESS AND TRANSPORTATION

June 3

1 In line 2 of the printed A-engrossed bill, after “development;” delete the rest of the line and
2 insert “creating new provisions; amending ORS 285C.650, 315.533 and 731.854; and prescribing an
3 effective date.”.

4 Delete lines 4 through 13 insert:

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

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

25 “(6) The following conditions must exist for a taxpayer to be eligible for the credit allowed un-
26 der this section:

27 “(a) A qualified community development entity that issues a debt instrument may not make cash
28 interest payments on the debt instrument during the period commencing with its issuance and end-
29 ing on its final credit allowance date in excess of the sum of the cash interest payments and the
30 cumulative operating income, as defined in the regulations promulgated under section 45D of the
31 Internal Revenue Code, of the qualified community development entity for the same period. Neither
32 this paragraph nor the definition of ‘long-term debt security’ provided in ORS 315.529 in any way
33 limits the holder’s ability to accelerate payments on the debt instrument in situations where the
34 qualified community development entity has defaulted on covenants designed to ensure compliance
35 with this section or section 45D of the Internal Revenue Code.

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

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

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

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

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

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

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

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

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

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

30 “285C.650. (1) A qualified community development entity that seeks to have an equity investment
31 or long-term debt security certified as a qualified equity investment and eligible for a tax credit
32 under ORS 315.533 shall apply to the Oregon Business Development Department. The department
33 shall establish by rule application procedures for applications for certification. The entity must
34 submit an application on a form that the department provides that includes:

35 “(a) The entity’s name, address, tax identification number and evidence of the entity’s certif-
36 ication as a qualified community development entity.

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

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

43 “(d) A description of the proposed purchase price, structure and purchaser of the equity in-
44 vestment or long-term debt security.

45 “(e) The name and tax identification number of any person eligible to claim a tax credit, under

1 ORS 315.533, allowed as a result of the certification of the qualified equity investment.

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

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

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

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

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

29 “(b) **For a qualified equity investment described in ORS 285C.653 (2), a qualified commu-
30 nity development entity shall issue the qualified equity investment during the period begin-
31 ning July 1, 2012, and ending 60 days after receiving notice of certification. If the qualified
32 equity investment is issued prior to the submission of an application for certification under
33 this section, the qualified community development entity must provide the department with
34 evidence of the qualified equity investment and of receipt of the cash investment at the time
35 of application for certification.**

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

42 “(5) The department shall certify qualified equity investments in the order applications are re-
43 ceived by the department. Applications received on the same day shall be deemed to have been re-
44 ceived simultaneously. For applications received on the same day and deemed complete, the
45 department shall certify, consistent with remaining tax credit capacity, qualified equity investments

1 in proportionate percentages based upon the ratio of the amount of qualified equity investment re-
2 quested in an application to the total amount of qualified equity investments requested in all appli-
3 cations received on the same day. If a pending request cannot be fully certified because of the
4 limitation in ORS 285C.653, the department shall certify the portion that may be certified unless the
5 qualified community development entity elects to withdraw its request rather than receive partial
6 credit.

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

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

11 **“SECTION 3. The amendments to ORS 285C.650 and 315.533 by sections 1 and 2 of this**
12 **2013 Act apply to qualified equity investments made on or after July 1, 2012.**

13 **“SECTION 4.** ORS 731.854 is amended to read:

14 “731.854. (1) When by or pursuant to the laws of any other state or foreign country any taxes,
15 licenses and other fees, in the aggregate, and any fines, penalties, deposit requirements or other
16 material obligations, prohibitions or restrictions are or would be imposed upon insurers domiciled
17 in this state, or upon the insurance producers or representatives of such insurers, which are in ex-
18 cess of such taxes, licenses and other fees, in the aggregate, or which are in excess of the fines,
19 penalties, deposit requirements or other obligations, prohibitions, or restrictions directly imposed
20 upon similar insurers, or upon the insurance producers or representatives of such insurers, of such
21 other state or country under the statutes of this state, so long as such laws of such other state or
22 country continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate,
23 or fines, penalties or deposit requirements or other material obligations, prohibitions, or restrictions
24 of whatever kind shall be imposed by the Director of the Department of Consumer and Business
25 Services upon the insurers, or upon the insurance producers or representatives of such insurers, of
26 such other state or country doing business or seeking to do business in this state. Any tax, license
27 or other fee or other obligation imposed by any city, county, or other political subdivision or agency
28 of such other state or country on insurers domiciled in this state or their insurance producers or
29 representatives shall be deemed to be imposed by such state or country within the meaning of this
30 subsection.

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

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

45 “(4) For the purpose of applying this section to an alien insurer, its domicile shall be determined

1 in accordance with ORS 731.092 and 731.096.

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

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

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

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

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

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

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