

# House Bill 4005

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

## 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**.

Establishes income tax credit for manufacturing facility if taxpayer makes capital investment. Provides for certification by Oregon Business Development Department. Authorizes department to certify business firms on or after July 1, 2014, and on or before December 31, 2017. Limits amount of credits allowed per biennium. Applies to tax years beginning on or after January 1, 2014, and before January 1, 2018.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to tax expenditures; creating new provisions; amending ORS 314.752 and 318.031; and pre-  
3 scribing an effective date.

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

5 **SECTION 1. Sections 2 to 6 of this 2014 Act are added to and made a part of ORS chapter**  
6 **285C.**

7 **SECTION 2. As used in sections 2 to 6 of this 2014 Act:**

8 (1) **"Annual full-time equivalent employment" means the number that results from di-**  
9 **viding by 1,820 the total number of hours for which any employed person receives pay in a**  
10 **year.**

11 (2) **"Annual gross payroll" means wages and salaries paid in a year to persons employed**  
12 **by a taxpayer, or to a licensed worker leasing company that is contracting with the taxpayer**  
13 **to provide workers, and the taxpayer's payments in the year for workers' compensation,**  
14 **payroll taxes, pension or other retirement plan contributions, health or other insurance**  
15 **premiums and other similar benefits for persons employed by the taxpayer, or the licensed**  
16 **worker leasing company, excluding executive officers or employees who own a five percent**  
17 **or greater share in the taxpayer.**

18 (3) **"Average wage" means the annual average wage or salary reported for covered em-**  
19 **ployment by the Employment Department for a county or for this state at the time a tax-**  
20 **payer is certified under section 3 of this 2014 Act.**

21 **SECTION 3. (1) A taxpayer seeking the income or corporate excise tax credit allowed**  
22 **under section 11 of this 2014 Act shall apply to the Oregon Business Development Depart-**  
23 **ment for certification under this section.**

24 (2) **The application must be on a form prescribed by the Oregon Business Development**  
25 **Department by rule and must contain the following information:**

26 (a) **The locations or proposed locations at which the taxpayer is or will be doing business;**

27 (b) **A description of new or expanded operations to be conducted by the taxpayer and the**  
28 **intended duration of the operations;**

**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) For the 12 months preceding the application for certification, the average number of  
 2 full-time, year-round employees of the taxpayer in this state;

3 (d) The intended number of full-time, year-round employees to be hired, annual gross  
 4 payroll and annual full-time equivalent employment for the proposed new or expanded oper-  
 5 ations of the taxpayer;

6 (e) A description of any other business activities of the taxpayer in this state at the time  
 7 of application;

8 (f) The proposed amount of new investment by the taxpayer in manufacturing facility  
 9 improvements; and

10 (g) Any other information the department requires.

11 (3) An application filed under this section must be accompanied by a fee in an amount  
 12 prescribed by the Oregon Business Development Department by rule. The fee required under  
 13 this subsection must not exceed \$25,000.

14 (4) When an application is filed under this section, the Oregon Business Development  
 15 Department shall review the application and determine whether:

16 (a) The taxpayer is doing business in a traded sector, as defined in ORS 285B.280;

17 (b) Prior to certification, the taxpayer will hire additional employees, with a net gain of  
 18 at least five full-time, year-round employees per \$1 million of tax credit allowed; and

19 (c) The increase in annual gross payroll of the taxpayer in any county divided by the  
 20 change in annual full-time equivalent employment of the taxpayer in that county will equal  
 21 or exceed 150 percent of the average wage of the county or state, whichever is less.

22 (5) Prior to issuing a certification under subsection (7) of this section, the Oregon Busi-  
 23 ness Development Department shall enter into a performance agreement with the taxpayer.  
 24 The agreement must contain a statement by the taxpayer that the taxpayer would not have  
 25 made the capital investment required under section 11 of this 2014 Act or increased its an-  
 26 nual gross payroll but for the availability of the credit allowed under section 11 of this 2014  
 27 Act. The agreement must contain detailed performance measures related to the require-  
 28 ments of section 11 of this 2014 Act with which the taxpayer must comply, including condi-  
 29 tions on the number of employment positions to be created by the taxpayer, the average  
 30 wage compensation of those jobs, the minimum period of operation and the remedies avail-  
 31 able to the department in the event that the taxpayer does not meet the terms of the per-  
 32 formance agreement or other requirements under sections 2 to 6 and 10 to 13 of this 2014  
 33 Act.

34 (6) The Oregon Business Development Department may require escrow accounts, letters  
 35 of credit, security interests or other measures to protect the financial interests of the state  
 36 in the event a project fails to meet the conditions of the performance agreement.

37 (7) The Oregon Business Development Department shall issue a certification to the tax-  
 38 payer, and furnish a copy to the Department of Revenue, if the Oregon Business Develop-  
 39 ment Department determines that:

40 (a) The taxpayer satisfies the requirements for certification described in subsection (4)  
 41 of this section, if the taxpayer operates as described in the application filed under this sec-  
 42 tion; and

43 (b) The taxpayer is performing in accordance with the performance agreement required  
 44 under subsection (5) of this section.

45 (8) The certification issued by the Oregon Business Development Department pursuant

1 to subsection (7) of this section must specify:

2 (a) The current county average wage of each county in which the taxpayer is doing  
3 business.

4 (b) The following information related to the taxpayer, as disclosed in the application as  
5 existing at the time of application:

6 (A) The number of full-time, year-round employees;

7 (B) The annual gross payroll; and

8 (C) The annual full-time equivalent employment in this state.

9 (c) Any other information that the department requires.

10 (9) If the Oregon Business Development Department determines that the taxpayer does  
11 not satisfy the requirements for certification described in subsection (4) of this section, the  
12 department may not issue a certification.

13 (10) A decision to issue or deny a certification under this section is at the sole discretion  
14 of the Director of the Oregon Business Development Department. The Oregon Business De-  
15 velopment Department shall afford any taxpayer that is denied a certification under this  
16 section the opportunity to contest the denial at a hearing that employs procedures that are  
17 compatible with the requirements of due process of law. The decision of the director at the  
18 hearing is final and is not subject to appeal.

19 (11) The Oregon Business Development Department must approve or disapprove an ap-  
20 plication under this section within 60 days after the date that the taxpayer demonstrates to  
21 the department that the taxpayer has hired the number of employees indicated in the appli-  
22 cation.

23 **SECTION 4.** (1) Pursuant to the procedures for a contested case under ORS chapter 183,  
24 the Director of the Oregon Business Development Department may order the suspension or  
25 revocation of the certificate issued under section 3 of this 2014 Act if the director finds that:

26 (a) The certification was obtained by fraud or misrepresentation;

27 (b) The holder of the certificate or the operator of the facility has failed to construct or  
28 operate the facility in compliance with the plans, specifications and procedures in the cer-  
29 tificate or the performance agreement; or

30 (c) The facility is no longer in operation.

31 (2) As soon as the order of revocation under this section becomes final, the director shall  
32 notify the Department of Revenue of the order of revocation. Upon notification, the Depart-  
33 ment of Revenue immediately shall proceed to collect those taxes not paid by the certificate  
34 holder as a result of the tax relief provided to the holder.

35 (3)(a) The Department of Revenue shall have the benefit of all laws of this state per-  
36 taining to the collection of income and excise taxes and may proceed to collect the amounts  
37 described in subsection (2) of this section from the person that obtained certification from  
38 the Oregon Business Development Department, or any successor in interest to the business  
39 interests of that person. An assessment of tax is not necessary and a statute of limitation  
40 does not preclude the collection of taxes described in this subsection.

41 (b) For purposes of this subsection, a lender, bankruptcy trustee or other person that  
42 acquires an interest through bankruptcy or through foreclosure of a security interest is not  
43 considered to be a successor in interest to the business interests of the person that obtained  
44 certification.

45 **SECTION 5.** A taxpayer that has received certification for a facility under ORS 317.124

1 does not qualify for certification for a tax credit under section 11 of this 2014 Act. In that  
2 case, the Oregon Business Development Department shall issue a revocation of the certif-  
3 ication issued under section 3 of this 2014 Act to the taxpayer and furnish a copy of the re-  
4 vocation to the Department of Revenue.

5 **SECTION 6.** (1) In administering the credit allowed under section 11 of this 2014 Act, the  
6 Oregon Business Development Department shall establish by rule:

7 (a) Standards for reviewing the operation of a manufacturing facility, including the  
8 technical evaluation of the manufacturing facility, the likelihood of the taxpayer to operate  
9 the manufacturing facility successfully and prior experience of the taxpayer in comparable  
10 operations.

11 (b) Standards for reviewing the financial viability of the company, including financial  
12 background, assets, liabilities and business history of the taxpayer in operating the type of  
13 manufacturing facility proposed in the application.

14 (c) Criteria for evaluating the number of jobs created and compensation levels appropri-  
15 ate to the size of the proposed tax credit.

16 (2) The department may consult with an independent financial or technical adviser to  
17 evaluate the financial and technical viability and likelihood of long-term operation and suc-  
18 cess of each applicant.

19 (3) The department may also adopt rules that the department considers necessary to  
20 administer sections 2 to 6 of this 2014 Act.

21 **SECTION 7.** (1) For the biennium beginning July 1, 2013, the Oregon Business Develop-  
22 ment Department may not issue certifications under section 3 of this 2014 Act for more than  
23 \$50 million in potential tax credits.

24 (2) For biennia beginning on or after July 1, 2015, the department may not issue certif-  
25 ications under section 3 of this 2014 Act for more than \$50 million in potential tax credits in  
26 any biennium.

27 **SECTION 8.** The Oregon Business Development Department may issue certifications un-  
28 der section 3 of this 2014 Act for applications received on or after July 1, 2014, and on or  
29 before December 31, 2017.

30 **SECTION 9.** Sections 10 to 13 of this 2014 Act are added to and made a part of ORS  
31 chapter 315.

32 **SECTION 10.** As used in sections 10 to 13 of this 2014 Act, “annual full-time equivalent  
33 employment,” “annual gross payroll” and “average wage” have the meanings given those  
34 terms in section 2 of this 2014 Act.

35 **SECTION 11.** (1) As used in this section, “advanced manufacturing” means manufactur-  
36 ing that:

37 (a) Requires the use and coordination of information, automation, computation, software,  
38 sensing and networking;

39 (b) Employs innovative materials and emerging capabilities enabled by the physical and  
40 biological sciences; or

41 (c) Requires high-skilled labor.

42 (2) A credit against taxes that are otherwise due under ORS chapter 316 or, if the tax-  
43 payer is a corporation, under ORS chapter 317 or 318 is allowed to a taxpayer that makes a  
44 capital investment of at least \$2.5 million and establishes that, at a manufacturing facility  
45 for which certification under section 3 of this 2014 Act is sought, the taxpayer is:

1 (a) Doing business in a traded sector, as defined in ORS 285B.280;

2 (b) Engaged in advanced manufacturing; or

3 (c) Engaged in other manufacturing activities that during the tax year will create em-  
4 ployment positions providing wages equal to at least 150 percent of the average wage for the  
5 county in which the manufacturing facility is located or the average wage for this state,  
6 whichever is less.

7 (3) A taxpayer, or a taxpayer's successor in interest, may not receive more than one  
8 credit under this section.

9 (4) The Oregon Business Development Department shall give preference for the credit  
10 allowed under this section to taxpayers that are engaged in manufacturing related to  
11 renewable energy.

12 (5) The credit allowed under this section shall be in the amount of 50 percent of eligible  
13 expenses of the taxpayer, but may not exceed \$10 million. Eligible expenses include capital  
14 costs of the manufacturing facility, employee compensation that is associated with new  
15 capital investment and worker training costs necessary for the first full year of operation  
16 of the manufacturing facility.

17 (6) If a credit allowed under this section reduces tax liability to zero and an amount of  
18 the credit remains unused, the remaining unused amount shall be refunded to the taxpayer.  
19 For purposes of ORS chapters 305, 314, 315, 317 and 318, refunds issued under this subsection  
20 are refunds of an overpayment of tax imposed under ORS chapter 317 or 318.

21 (7) The credit allowed under this section must be claimed in one tax year, unless the  
22 certification under section 3 of this 2014 Act provides otherwise. The Oregon Business De-  
23 velopment Department may allocate the allowance of the credit to a taxpayer over several  
24 tax years that correspond with the progress of the taxpayer's investment.

25 (8) A taxpayer seeking a credit under this section shall claim the credit on a form pre-  
26 scribed by the Department of Revenue by rule that contains, for the tax year for which the  
27 credit is claimed, the following information related to the taxpayer:

28 (a) The annual average number of full-time, year-round employees;

29 (b) The annual gross payroll;

30 (c) The annual full-time equivalent employment in this state; and

31 (d) Any other information the Department of Revenue requires.

32 (9)(a) A credit allowed under this section is not in lieu of any deduction for depreciation,  
33 amortization, payroll costs or any other expense to which the taxpayer may be entitled.

34 (b) The taxpayer's adjusted basis for determining gain or loss may not be decreased by  
35 any credit allowed under this section.

36 (c) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or  
37 if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the  
38 credit allowed by this section shall be prorated or computed in a manner consistent with ORS  
39 314.085.

40 (d)(A) A nonresident shall be allowed the credit computed under this section in the same  
41 manner and subject to the same limitations as the credit allowed a resident of this state.  
42 However, the credit shall be prorated using the proportion provided in ORS 316.117.

43 (B) If a change in the status of a taxpayer from resident to nonresident or from non-  
44 resident to resident occurs, the credit allowed by this section shall be determined in a man-  
45 ner consistent with ORS 316.117.

1       **SECTION 12.** (1) A taxpayer that has claimed a credit under section 11 of this 2014 Act  
 2 shall maintain records sufficient to show that the taxpayer has met the requirements for  
 3 certification described in section 3 of this 2014 Act and the criteria for allowing and com-  
 4 puting the credit under section 11 of this 2014 Act.

5       (2) The taxpayer shall provide the records required to be maintained under this section  
 6 to the Oregon Business Development Department or the Department of Revenue if requested  
 7 to do so.

8       (3) The taxpayer shall maintain the records described in this section for at least 10 years  
 9 following the last tax year for which the taxpayer claims any credit under section 11 of this  
 10 2014 Act.

11       **SECTION 13.** Not later than February 1 of each odd-numbered year, the Oregon Business  
 12 Development Department shall report to the Legislative Assembly on the utilization of the  
 13 credit allowed under sections 2 to 6 and 10 to 13 of this 2014 Act. The report required under  
 14 this section shall include data about:

15       (1) Applications for certification received.

16       (2) Total amounts of tax credits certified and claimed by tax year.

17       (3) Employment positions created or retained by taxpayers in connection with manufac-  
 18 turing facilities that receive credits and total payroll increase in this state attributable to  
 19 the credit.

20       (4) Capital investment realized and other economic impacts of the manufacturing facili-  
 21 ties.

22       **SECTION 14.** Sections 2 to 6 and 10 to 13 of this 2014 Act apply to tax years beginning  
 23 on or after January 1, 2014, and before January 1, 2018.

24       **SECTION 15.** ORS 314.752 is amended to read:

25       314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a  
 26 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The  
 27 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are  
 28 allowable to the shareholders of the S corporation.

29       (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on  
 30 income of the shareholder of an S corporation, there shall be taken into account the shareholder's  
 31 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but  
 32 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-  
 33 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the  
 34 manner prescribed under section 1377(a) of the Internal Revenue Code.

35       (3) The character of any item included in a shareholder's pro rata share under subsection (2)  
 36 of this section shall be determined as if such item were realized directly from the source from which  
 37 realized by the corporation, or incurred in the same manner as incurred by the corporation.

38       (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax  
 39 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS  
 40 316.117, then that provision shall apply to the nonresident shareholder.

41       (5) As used in this section, "business tax credit" means a tax credit granted to personal income  
 42 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive  
 43 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-  
 44 section as a business tax credit or is designated as a business tax credit by law or by the Depart-  
 45 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309

1 (tribal taxes on reservation enterprise zones and reservation partnership zones), ORS 315.104 (fore-  
 2 station and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141  
 3 (biomass production for biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture  
 4 workforce housing), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facili-  
 5 ties), ORS 315.213 (contributions for child care), ORS 315.304 (pollution control facility), ORS 315.326  
 6 (renewable energy development contributions), ORS 315.331 (energy conservation projects), ORS  
 7 315.336 (transportation projects), ORS 315.341 (renewable energy resource equipment manufacturing  
 8 facilities), ORS 315.354 and 469B.151 (energy conservation facilities), ORS 315.507 (electronic com-  
 9 merce), ORS 315.533 (low income community jobs initiative) and ORS 317.115 (fueling stations nec-  
 10 essary to operate an alternative fuel vehicle) **and section 11 of this 2014 Act (manufacturing**  
 11 **facilities).**

12 **SECTION 16.** ORS 318.031 is amended to read:

13 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter  
 14 317 shall be administered as uniformly as possible (allowance being made for the difference in im-  
 15 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-  
 16 corporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.141, 315.156, 315.204,  
 17 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.507 and 315.533 **and section 11 of this 2014**  
 18 **Act** (all only to the extent applicable to a corporation) and ORS chapter 317.

19 **SECTION 17. This 2014 Act takes effect on the 91st day after the date on which the 2014**  
 20 **regular session of the Seventy-seventh Legislative Assembly adjourns sine die.**

21