

House Bill 3103

Sponsored by Representative MCKEOWN, Senator ROBLAN

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**.

Expands conditions necessary for qualified community development entity to earn tax credit for qualified equity investment. Requires prior approval by Oregon Department of Business Development and subsequent proof of investment in qualified low-income community investment or in qualified active low-income community business. Allows department to establish preferences for certifying qualified equity investments.

Applies to investments made on or after January 1, 2016, to qualified equity investments certified on or after January 1, 2016, and to tax years beginning on or after January 1, 2016.

Extends sunset for tax credit for qualified equity investment.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to qualified equity investments; creating new provisions; amending ORS 285C.650 and
3 315.533; 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) The credit allowed under this section may not exceed the tax liability of the taxpayer for the
19 tax year in which the credit is claimed.

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

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

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

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

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

24 **(d) A qualified community development entity making an investment in a qualified low-**
25 **income community investment or in a qualified active low-income community business shall:**

26 **(A) Obtain department approval prior to making the investment;**

27 **(B) Provide the department proof of the investment within 30 days after funding the in-**
28 **vestment; and**

29 **(C) Provide the department notice within 30 days if an approved investment is withdrawn.**

30 [(d)] (e) The qualified community development entity shall report annually to the department:

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

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

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

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

40 [(f)] (g) A qualified equity investment must be made before July 1, [2016] **2022**. Nothing in this
41 paragraph precludes an entity that makes a qualified equity investment prior to July 1, [2016]
42 **2022**, from claiming a tax credit relating to that qualified equity investment for each applicable
43 credit allowance date.

44 (7) A taxpayer claiming a credit under this section may not claim any other credit under this
45 chapter or ORS chapter 285C during the same tax year based on activities related to the same

1 qualified active low-income community business.

2 **SECTION 2. The amendments to ORS 315.533 by section 1 of this 2015 Act apply to in-**
3 **vestments made on or after January 1, 2016, and to tax years beginning on or after January**
4 **1, 2016.**

5 **SECTION 3.** ORS 285C.650 is amended to read:

6 285C.650. (1) A qualified community development entity that seeks to have an equity investment
7 or long-term debt security certified as a qualified equity investment and eligible for a tax credit
8 under ORS 315.533 shall apply to the Oregon Business Development Department. The department
9 shall establish by rule application procedures for applications for certification. The entity must
10 submit an application on a form that the department provides that includes:

11 (a) The entity's name, address, tax identification number and evidence of the entity's certifica-
12 tion as a qualified community development entity.

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

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

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

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

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

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

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

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

45 (4)(a) Except as provided in paragraph (b) of this subsection, within 60 days after receiving no-

1 tice of certification, a qualified community development entity shall issue the qualified equity in-
 2 vestment and receive cash in the amount of the certified purchase price. The qualified community
 3 development entity must provide the department with evidence of the receipt of the cash investment
 4 within 10 business days after receipt.

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

11 (c) If a qualified community development entity does not receive the cash investment and issue
 12 the qualified equity investment on or before the 60th day following receipt of the certification no-
 13 tice, the certification shall lapse and the entity may not issue the qualified equity investment with-
 14 out reapplying to the department for certification. A certification that lapses reverts to the
 15 department and may be reissued only in accordance with the application process outlined in this
 16 section.

17 (5) The department shall certify qualified equity investments in the order applications are re-
 18 ceived by the department. Applications received on the same day shall be deemed to have been
 19 received simultaneously. For applications received on the same day and deemed complete, the de-
 20 partment *[shall]* **may** certify, consistent with remaining tax credit capacity, qualified equity invest-
 21 ments in proportionate percentages based upon the ratio of the amount of qualified equity
 22 investment requested in an application to the total amount of qualified equity investments requested
 23 in all applications received on the same day.

24 **(6) Notwithstanding subsection (5) of this section, the Director of the Oregon Business**
 25 **Development Department may by rule establish preferences for certifying qualified equity**
 26 **investments. Preferences may include, but are not limited to, investments that prioritize**
 27 **investment because they are:**

28 (a) **Made in distressed areas as defined in ORS 285A.010;**

29 (b) **Made in rural communities with populations of fewer than 50,000 individuals; or**

30 (c) **Demonstrate significant potential community, economic or social benefit as deter-**
 31 **mined by the director.**

32 (7) If a pending request cannot be fully certified because of the limitation in ORS 285C.653, the
 33 department shall certify the portion that may be certified unless the qualified community develop-
 34 ment entity elects to withdraw its request rather than receive partial credit.

35 [(6)] (8) A qualified community development entity that is certified under this section shall pay
 36 an annual evaluation fee of \$1,000 to the department.

37 [(7)] (9) The department shall establish by rule procedures to administer the provisions of this
 38 section, including the allocation of tax credits issued for qualified equity investments.

39 **SECTION 4. The amendments to ORS 285C.650 by section 3 of this 2015 Act apply to**
 40 **qualified equity investments certified on or after January 1, 2016.**

41 **SECTION 5. This 2015 Act takes effect on the 91st day after the date on which the 2015**
 42 **regular session of the Seventy-eighth Legislative Assembly adjourns sine die.**