

# D R A F T

## SUMMARY

Limits fees payable to qualified community development entity in connection with qualified entity investment.

Extends sunset for tax credit for qualified equity investment. Increases maximum amount of qualified equity investments that Oregon Business Development Department may certify per tax year, and maximum amount of qualified low-income community investments that may be made in qualified active low-income community business and all affiliates.

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

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to qualified equity investments; amending ORS 285C.650, 285C.653  
3 and 315.533 and section 11, chapter 732, Oregon Laws 2011; and prescrib-  
4 ing an effective date.

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

6 **SECTION 1.** ORS 285C.650 is amended to read:

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

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

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

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5 that the allocation agreement remains in effect and has not been revoked or  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

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

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

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

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

16 (2) Within 15 days after receipt of a completed application containing the  
17 information necessary for the department to certify a proposed equity in-  
18 vestment, including the payment of the application fee, the department shall  
19 grant or deny the application in full or in part. If the department denies any  
20 part of the application, the department shall inform the qualified community  
21 development entity of the grounds for the denial. If the qualified community  
22 development entity provides any additional information required by the de-  
23 partment or otherwise completes its application within 15 days after the no-  
24 tice of denial, the application shall be considered completed as of the  
25 original date of submission. If the qualified community development entity  
26 fails to provide the information or complete its application within the 15-day  
27 period, the application remains denied and must be resubmitted in full with  
28 a new submission date.

29 (3) If the application is deemed complete, the department shall certify the  
30 proposed equity investment or long-term debt security as a qualified equity  
31 investment and eligible for a tax credit under ORS 315.533, subject to the

1 limitations in ORS 315.536. The department shall provide written notice of  
2 the certification to the qualified community development entity. The notice  
3 shall include the names of those taxpayers who are eligible to utilize the  
4 credits and their respective credit amounts. If the names of the persons or  
5 entities that are eligible to utilize the credits change due to a transfer of a  
6 qualified equity investment or a change in an allocation pursuant to ORS  
7 315.536, the qualified community development entity shall notify the depart-  
8 ment of the change.

9 (4)(a) Except as provided in paragraph (b) of this subsection, within 60  
10 days after receiving notice of certification, a qualified community develop-  
11 ment entity shall issue the qualified equity investment and receive cash in  
12 the amount of the certified purchase price. The qualified community devel-  
13 opment entity must provide the department with evidence of the receipt of  
14 the cash investment within 10 business days after receipt.

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

23 (c) If a qualified community development entity does not receive the cash  
24 investment and issue the qualified equity investment on or before the 60th  
25 day following receipt of the certification notice, the certification shall lapse  
26 and the entity may not issue the qualified equity investment without reap-  
27 plying to the department for certification. A certification that lapses reverts  
28 to the department and may be reissued only in accordance with the applica-  
29 tion process outlined in this section.

30 (5) The department shall certify qualified equity investments in the order  
31 applications are received by the department. Applications received on the

1 same day shall be deemed to have been received simultaneously. For appli-  
2 cations received on the same day and deemed complete, the department shall  
3 certify, consistent with remaining tax credit capacity, qualified equity in-  
4 vestments in proportionate percentages based upon the ratio of the amount  
5 of qualified equity investment requested in an application to the total  
6 amount of qualified equity investments requested in all applications received  
7 on the same day. If a pending request cannot be fully certified because of the  
8 limitation in ORS 285C.653, the department shall certify the portion that may  
9 be certified unless the qualified community development entity elects to  
10 withdraw its request rather than receive partial credit.

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

13 **(7) Any fees paid to a qualified community development entity in**  
14 **connection with a qualified equity investment may not exceed three**  
15 **percent of the qualified equity investment.**

16 [(7)] (8) The department shall establish by rule procedures to administer  
17 the provisions of this section, including the allocation of tax credits issued  
18 for qualified equity investments.

19 **SECTION 2.** ORS 285C.653 is amended to read:

20 285C.653. (1) Once the Oregon Business Development Department has  
21 certified a cumulative amount of qualified equity investments that can result  
22 in the utilization of [~~\$16~~] **\$24** million of tax credits in any tax year, the de-  
23 partment may not certify any more qualified equity investments under ORS  
24 285C.650. This limitation shall be based on the scheduled utilization of tax  
25 credits without regard to the potential for taxpayers to carry forward tax  
26 credits to later tax years.

27 (2) The department shall reserve 15 percent of the total amount of quali-  
28 fied equity investments that receive certification under ORS 285C.650 for  
29 investments in qualified active low-income community businesses that:

30 (a) Have a primary purpose of improving the environment or reducing  
31 emissions of greenhouse gases; or

1 (b) Produce goods that directly reduce emissions of greenhouse gases or  
2 are designed as environmentally sensitive replacements for products in cur-  
3 rent use.

4 (3) The department shall establish by rule procedures and criteria for  
5 implementing the provisions of this section.

6 **SECTION 3.** ORS 315.533 is amended to read:

7 315.533. (1) As used in this section, “applicable percentage” means zero  
8 percent for each of the first two credit allowance dates, seven percent for the  
9 third credit allowance date and eight percent for the next four credit allow-  
10 ance dates.

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

15 (3)(a) The total amount of the tax credit available to a taxpayer under  
16 this section shall equal 39 percent of the purchase price of the qualified eq-  
17 uity investment.

18 (b) The taxpayer that holds a qualified equity investment on a particular  
19 credit allowance date of the qualified equity investment may claim a portion  
20 of the tax credit against its tax liability for the tax year that includes the  
21 credit allowance date equal to the applicable percentage for that credit al-  
22 lowance date multiplied by the purchase price of the qualified equity in-  
23 vestment.

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

26 (5) Any tax credit otherwise allowable under this section that is not used  
27 by the taxpayer in a particular tax year may be carried forward and offset  
28 against the taxpayer’s tax liability for the next succeeding tax year. Any  
29 credit remaining unused in the next succeeding tax year may be carried  
30 forward and used in the second succeeding tax year. Any credit remaining  
31 unused in the second succeeding tax year may be carried forward and used

1 in the third succeeding tax year. Any credit remaining unused in the third  
2 succeeding tax year may be carried forward and used in the fourth succeed-  
3 ing tax year. Any credit remaining unused in the fourth succeeding tax year  
4 may be carried forward and used in the fifth succeeding tax year, but may  
5 not be used in any tax year thereafter.

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

8 (a) A qualified community development entity that issues a debt instru-  
9 ment may not make cash interest payments on the debt instrument during  
10 the period commencing with its issuance and ending on its final credit al-  
11 lowance date in excess of the sum of the cash interest payments and the  
12 cumulative operating income, as defined in the regulations promulgated un-  
13 der section 45D of the Internal Revenue Code, of the qualified community  
14 development entity for the same period. Neither this paragraph nor the de-  
15 finition of “long-term debt security” provided in ORS 315.529 in any way  
16 limits the holder’s ability to accelerate payments on the debt instrument in  
17 situations where the qualified community development entity has defaulted  
18 on covenants designed to ensure compliance with this section or section 45D  
19 of the Internal Revenue Code.

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

27 (c) A qualified equity investment must be designated by the issuer as a  
28 qualified equity investment and be certified by the Oregon Business Devel-  
29 opment Department as not exceeding the limitation in ORS 285C.653. The  
30 qualified community development entity must keep sufficiently detailed  
31 books and records with respect to the investments made with the proceeds

1 of the qualified equity investments to allow the direct tracing of proceeds  
2 into qualified low-income community investments in qualified active low-  
3 income community businesses in this state.

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

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

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

11 (C) The number of positions described in subparagraph (A) of this para-  
12 graph that provide health benefits.

13 (e) The maximum amount of qualified low-income community investments  
14 that may be made in a qualified active low-income community business and  
15 all of its affiliates, with the proceeds of qualified equity investments that  
16 have been certified under ORS 285C.650, shall be [~~\$8~~] **\$10** million, whether  
17 made by one or several qualified community development entities.

18 (f) A qualified equity investment must be made before July 1, [2016]  
19 **2022**. Nothing in this paragraph precludes an entity that makes a qualified  
20 equity investment prior to July 1, [2016] **2022**, from claiming a tax credit  
21 relating to that qualified equity investment for each applicable credit al-  
22 lowance date.

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

27 **SECTION 4.** Section 11, chapter 732, Oregon Laws 2011, is amended to  
28 read:

29 **Sec. 11. (1)** [*Sections 2 to 8 of this 2011 Act*] **315.529 to 315.536, 285C.650,**  
30 **285C.653, 285C.656** and the amendments to ORS 314.752 and 318.031 by  
31 sections 9 and 10 [*of this 2011 Act*], **chapter 732, Oregon Laws 2011**, apply

1 to qualified equity investments made on or after July 1, 2012.

2 **(2) The amendments to ORS 285C.650, 285C.653 and 315.533 by**  
3 **sections 1 to 3 of this 2017 Act apply to tax years beginning on or after**  
4 **January 1, 2016, and to qualified equity investments made in tax years**  
5 **beginning on or after January 1, 2016.**

6 **SECTION 5. This 2017 Act takes effect on the 91st day after the date**  
7 **on which the 2017 regular session of the Seventy-ninth Legislative**  
8 **Assembly adjourns sine die.**

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