

A-Engrossed
House Bill 2155

Ordered by the House April 13
Including House Amendments dated April 13

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Special Committee on Small Business Growth)

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.

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. [*Provides, for bioscience incubator, higher limitations on amount of qualified low-income community investments that may be made with proceeds of qualified equity investments that are certified for tax credit.*] **Limits fees paid to qualified community development entity. For purposes of annual revenue limitation applicable to qualified active low-income community business, exempts residential rental income from dwelling units intended to be affordable.**

Applies to **tax years beginning on or after January 1, 2018, and to** qualified equity investments made **in tax years beginning** on or after January 1, 2018[, and before July 1, 2022].

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to qualified equity investment tax credits; amending ORS 285C.650, 285C.653, 315.529 and
3 315.533 and section 11, chapter 732, Oregon Laws 2011; and prescribing an effective date.

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

5 **SECTION 1.** 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

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 investment.

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

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

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

22 (4)(a) Except as provided in paragraph (b) of this subsection, within 60 days after receiving no-
23 tice of certification, a qualified community development entity shall issue the qualified equity in-
24 vestment and receive cash in the amount of the certified purchase price. The qualified community
25 development entity must provide the department with evidence of the receipt of the cash investment
26 within 10 business days after receipt.

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

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

39 (5) The department shall certify qualified equity investments in the order applications are re-
40 ceived by the department. Applications received on the same day shall be deemed to have been
41 received simultaneously. For applications received on the same day and deemed complete, the de-
42 partment shall certify, consistent with remaining tax credit capacity, qualified equity investments
43 in proportionate percentages based upon the ratio of the amount of qualified equity investment re-
44 quested in an application to the total amount of qualified equity investments requested in all appli-
45 cations received on the same day. If a pending request cannot be fully certified because of the

1 limitation in ORS 285C.653, the department shall certify the portion that may be certified unless the
2 qualified community development entity elects to withdraw its request rather than receive partial
3 credit.

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

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

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

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

11 285C.653. (1) Once the Oregon Business Development Department has certified a cumulative
12 amount of qualified equity investments that can result in the utilization of [~~\$16~~] **\$24** million of tax
13 credits in any tax year, the department may not certify any more qualified equity investments under
14 ORS 285C.650. This limitation shall be based on the scheduled utilization of tax credits without re-
15 gard to the potential for taxpayers to carry forward tax credits to later tax years.

16 (2) The department shall reserve 15 percent of the total amount of qualified equity investments
17 that receive certification under ORS 285C.650 for investments in qualified active low-income com-
18 munity businesses that:

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

21 (b) Produce goods that directly reduce emissions of greenhouse gases or are designed as envi-
22 ronmentally sensitive replacements for products in current use.

23 (3) The department shall establish by rule procedures and criteria for implementing the pro-
24 visions of this section.

25 **SECTION 3.** ORS 315.529 is amended to read:

26 315.529. As used in ORS 285C.650, 285C.653, 285C.656 and 315.529 to 315.536:

27 (1) "Credit allowance date" means, with respect to any qualified equity investment:

28 (a) The date on which the investment is initially made; and

29 (b) Each of the six yearly anniversary dates after that initial date.

30 (2) "Long-term debt security" means any debt instrument issued by a qualified community de-
31 velopment entity, at par value or at a premium, with an original maturity date of at least seven
32 years from the date of its issuance, with no acceleration of repayment, amortization or prepayment
33 features prior to its original maturity date.

34 (3) "Purchase price" means the amount of cash paid to a qualified community development entity
35 for a qualified equity investment.

36 (4)(a) "Qualified active low-income community business" has the meaning given that term in
37 section 45D of the Internal Revenue Code. "Qualified active low-income community business" does
38 not include a business that derives or projects to derive 15 percent or more of its annual revenue
39 from the rental or sale of real estate, unless the business is controlled by, or under common control
40 with, another business that:

41 [(a)] (A) Does not derive or project to derive 15 percent or more of its annual gross revenues
42 from the rental or sale of real estate; and

43 [(b)] (B) Is the primary tenant of real estate leased from the controlled business.

44 **(b) For purposes of this subsection, the calculation of annual gross revenues from the
45 rental or sale of real estate does not include amounts of residential rental income derived**

1 **from dwelling units that are constructed with the intention that they be occupied:**

2 **(A) By individuals or families whose household income is no more than 80 percent of the**
3 **greater of the statewide median family income or the median family income for the metro-**
4 **politan area in which the dwelling units are located; and**

5 **(B) At rents that are affordable, as determined by the Secretary of Housing and Urban**
6 **Development of the United States.**

7 (5) "Qualified community development entity" has the meaning given that term in section 45D
8 of the Internal Revenue Code, provided that the entity has entered into, or is controlled by an entity
9 that has entered into, an allocation agreement with the Community Development Financial Insti-
10 tutions Fund of the United States Department of the Treasury with respect to credits authorized by
11 section 45D of the Internal Revenue Code, and the State of Oregon is included within the service
12 area set forth in the allocation agreement.

13 (6) "Qualified equity investment" means any equity investment in, or long-term debt security
14 issued by, a qualified community development entity, that:

15 (a) Is acquired at its original issuance solely in exchange for cash after July 1, 2012, unless it
16 was a qualified equity investment in the hands of a prior holder; and

17 (b) Has at least 85 percent of its cash purchase price used by the issuer to make qualified low-
18 income community investments in qualified active low-income community businesses located in this
19 state.

20 (7) "Qualified low-income community investment" means any capital or equity investment in, or
21 loan to, any qualified active low-income community business made after July 1, 2012.

22 **SECTION 4.** ORS 315.533 is amended to read:

23 315.533. (1) As used in this section, "applicable percentage" means zero percent for each of the
24 first two credit allowance dates, seven percent for the third credit allowance date and eight percent
25 for the next four credit allowance dates.

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

29 (3)(a) The total amount of the tax credit available to a taxpayer under this section shall equal
30 39 percent of the purchase price of the qualified equity investment.

31 (b) The taxpayer that holds a qualified equity investment on a particular credit allowance date
32 of the qualified equity investment may claim a portion of the tax credit against its tax liability for
33 the tax year that includes the credit allowance date equal to the applicable percentage for that
34 credit allowance date multiplied by the purchase price of the qualified equity investment.

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

37 (5) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
38 particular tax year may be carried forward and offset against the taxpayer's tax liability for the next
39 succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried
40 forward and used in the second succeeding tax year. Any credit remaining unused in the second
41 succeeding tax year may be carried forward and used in the third succeeding tax year. Any credit
42 remaining unused in the third succeeding tax year may be carried forward and used in the fourth
43 succeeding tax year. Any credit remaining unused in the fourth succeeding tax year may be carried
44 forward and used in the fifth succeeding tax year, but may not be used in any tax year thereafter.

45 (6) The following conditions must exist for a taxpayer to be eligible for the credit allowed under

1 this section:

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

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

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

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

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

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

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

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

33 (f) A qualified equity investment must be made before [July 1, 2016] **January 1, 2023**. Nothing
34 in this paragraph precludes an entity that makes a qualified equity investment prior to [July 1,
35 2016] **January 1, 2023**, from claiming a tax credit relating to that qualified equity investment for
36 each applicable credit allowance date.

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

40 **SECTION 5.** Section 11, chapter 732, Oregon Laws 2011, is amended to read:

41 **Sec. 11. (1)** [Sections 2 to 8 of this 2011 Act] **ORS 285C.650, 285C.653, 285C.656 and 315.529 to**
42 **315.536** and the amendments to ORS 314.752 and 318.031 by sections 9 and 10 [of this 2011 Act],
43 **chapter 732, Oregon Laws 2011**, apply to qualified equity investments made on or after July 1,
44 2012.

45 **(2) The amendments to ORS 285C.650, 285C.653, 315.529 and 315.533 by sections 1 to 4 of**

1 **this 2017 Act apply to tax years beginning on or after January 1, 2018, and to qualified equity**
2 **investments made in tax years beginning on or after January 1, 2018.**

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

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