

Requested by HOUSE COMMITTEE ON REVENUE

**PROPOSED AMENDMENTS TO
HOUSE BILL 4028**

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the
2 line and line 3 and insert “315.176, 315.184, 315.516 and 317.097; and pre-
3 scribing an effective date.”.

4 Delete lines 5 through 27 and delete pages 2 through 9 and insert:

5 **“SECTION 1.** ORS 315.176 is amended to read:

6 “315.176. (1) As used in this section:

7 “(a) ‘Biofuel’ means liquid, gaseous or solid fuels, derived from biomass,
8 that have been converted into a processed fuel ready for use as energy by a
9 biofuel producer’s customers or for direct biomass energy use at the biofuel
10 producer’s site.

11 “(b) ‘Biofuel producer’ means a person that, through activities in Oregon:

12 “(A) Alters the physical makeup of biomass to convert it into biofuel;

13 “(B) Changes one biofuel into another type of biofuel; or

14 “(C) Uses biomass in Oregon to produce energy.

15 “(c) ‘Bovine manure’ means, subject to subsection (2) of this section,
16 [*cow*] **cattle** manure that is produced [*by cows*] on Oregon farms.

17 “(d) ‘Bovine manure producer or collector’ means a person that produces
18 or collects bovine manure in Oregon that is used, in Oregon, as biofuel or
19 to produce biofuel.

20 **“(e) ‘Cattle’ means cows, heifers, bulls, steers or calves.**

21 “(2) The Director of Agriculture may adopt rules to define criteria, only

1 as the criteria apply to bovine manure, to determine additional character-
2 istics of bovine manure for purposes of this section.

3 “(3)(a) A bovine manure producer or collector shall be allowed a credit
4 against the taxes that would otherwise be due under ORS chapter 316 or, if
5 the taxpayer is a corporation, under ORS chapter 317 or 318 for the col-
6 lection of bovine manure in Oregon that is used, in Oregon, as biofuel or to
7 produce biofuel.

8 “(b) A credit under this section may be claimed in the tax year in which
9 the credit is certified under this section.

10 “(c) A credit under this section may be claimed only once for each wet
11 ton of bovine manure.

12 “(4) The amount of the credit shall be calculated at a rate of \$3.50 per
13 wet ton, as certified under this section.

14 “(5)(a) The State Department of Agriculture may establish by rule proce-
15 dures and criteria for determining the amount of the tax credit to be certified
16 under this section. The department shall provide written certification to
17 taxpayers that are eligible to claim the credit under this section.

18 “(b) The State Department of Agriculture may charge and collect a fee
19 from taxpayers for certification of credits under this section. The fee may
20 not exceed the cost to the department of issuing certifications.

21 “(6) All fees collected under this section shall be deposited in the State
22 Treasury to the credit of the Department of Agriculture Service Fund.
23 Moneys deposited under this section are continuously appropriated to the
24 department for the purpose of administering and enforcing the provisions of
25 this section.

26 “(7)(a) The Department of Revenue may [*by rule*] require that the State
27 Department of Agriculture provide information about the certification issued
28 under this section, including the name and taxpayer identification number
29 of the taxpayer or other person receiving certification, the date the certi-
30 fication was issued in its final form, the approved amount of credit and the

1 first tax year for which the credit may be claimed.

2 “(b) A taxpayer that is a pass-through entity that has received certifica-
3 tion under this section shall provide [*the information described in paragraph*
4 *(a) of this subsection*] to the Department of Revenue within two months after
5 the close of the tax year in which the certification was issued **the name,**
6 **taxpayer identification number and any other information required by**
7 **the department of each owner receiving a distributive share of the**
8 **credit, in a manner prescribed by the department.**

9 “[*(c) The Department of Revenue shall prescribe by rule the manner and*
10 *the timing of submission of the information to the department.*]

11 “(8) The amount of the credit claimed under this section for any tax year
12 may not exceed the tax liability of the taxpayer.

13 “(9) Each bovine manure producer or collector shall maintain a record
14 of the written certification of the amount of the tax credit under this section
15 for a period of at least five years after the tax year in which the credit is
16 claimed and provide the written certification to the Department of Revenue
17 upon request.

18 “(10) The credit shall be claimed on a form prescribed by the Department
19 of Revenue that contains the information required by the department.

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

29 “(12) In the case of a credit allowed under this section:

30 “(a) A nonresident shall be allowed the credit under this section in the

1 proportion provided in ORS 316.117.

2 “(b) If a change in the status of the taxpayer from resident to nonresident
3 or from nonresident to resident occurs, the credit allowed by this section
4 shall be determined in a manner consistent with ORS 316.117.

5 “(c) If a change in the taxable year of the taxpayer occurs as described
6 in ORS 314.085, or if the department terminates the taxpayer’s taxable year
7 under ORS 314.440, the credit allowed under this section shall be prorated
8 or computed in a manner consistent with ORS 314.085.

9 **“SECTION 2.** ORS 315.184 is amended to read:

10 “315.184. The total amount [*claimed*] **certified by the State Department**
11 **of Agriculture** for tax credits for the production or collection of bovine
12 manure under ORS 315.176 may not exceed \$5 million for all taxpayers for
13 any [*tax*] **calendar** year. If the [*State*] department [*of Agriculture*] receives
14 applications for the credit sufficient to exceed this amount, the department
15 shall by rule proportionately reduce the amount of certified credits among
16 all taxpayers applying for the credit.

17 **“SECTION 3.** ORS 317.097 is amended to read:

18 “317.097. (1) As used in this section:

19 “(a) ‘Annual rate’ means the yearly interest rate specified on the note,
20 and not the annual percentage rate, if any, disclosed to the applicant to
21 comply with the federal Truth in Lending Act.

22 “(b) ‘Finance charge’ means the total of all interest, loan fees, interest
23 on any loan fees financed by the lending institution, and other charges re-
24 lated to the cost of obtaining credit.

25 “(c) ‘Lending institution’ means any insured institution, as that term is
26 defined in ORS 706.008, any mortgage banking company that maintains an
27 office in this state or any community development corporation that is or-
28 ganized under the Oregon Nonprofit Corporation Law.

29 “(d) ‘Manufactured dwelling park’ has the meaning given that term in
30 ORS 446.003.

1 “(e) ‘Nonprofit corporation’ means a corporation that is exempt from in-
2 come taxes under section 501(c)(3) or (4) of the Internal Revenue Code as
3 amended and in effect on December 31, 2016.

4 “(f) ‘Preservation project’ means housing that was previously developed
5 as affordable housing with a contract for rent assistance from the United
6 States Department of Housing and Urban Development or the United States
7 Department of Agriculture and that is being acquired by a sponsoring entity.

8 “(g) ‘Qualified assignee’ means any investor participating in the second-
9 ary market for real estate loans.

10 “(h) ‘Qualified borrower’ means any borrower that is a sponsoring entity
11 that has a controlling interest in the real property that is financed by a
12 qualified loan. A controlling interest includes[, *but is not limited to,*] a con-
13 trolling interest in the general partner of a limited partnership that owns
14 the real property.

15 “(i) ‘Qualified loan’ means:

16 “(A) A loan that meets the criteria stated in subsection (5) of this section
17 or that is made to refinance a loan that meets the criteria described in sub-
18 section (5) of this section; or

19 “(B) The purchase by a lending institution of bonds, as defined in ORS
20 286A.001, issued on behalf of the Housing and Community Services Depart-
21 ment, the proceeds of which are used to finance or refinance a loan that
22 meets the criteria described in subsection (5) of this section.

23 “(j) ‘Sponsoring entity’ means a nonprofit corporation, nonprofit cooper-
24 ative, state governmental entity, local unit of government as defined in ORS
25 466.706, housing authority or any other person, provided that the person has
26 agreed to restrictive covenants imposed by a nonprofit corporation, nonprofit
27 cooperative, state governmental entity, local unit of government or housing
28 authority.

29 “(2) The Department of Revenue shall allow a credit against taxes other-
30 wise due under this chapter for the taxable year to a lending institution that

1 makes a qualified loan certified by the Housing and Community Services
2 Department as provided in subsection (7) of this section. The amount of the
3 credit is equal to the difference between:

4 “(a) The amount of finance charge charged by the lending institution
5 during the taxable year at an annual rate less than the market rate for a
6 qualified loan that is made before January 1, 2026, that complies with the
7 requirements of this section; and

8 “(b) The amount of finance charge that would have been charged during
9 the taxable year by the lending institution for the qualified loan for housing
10 construction, development, acquisition or rehabilitation measured at the an-
11 nual rate charged by the lending institution for nonsubsidized loans made
12 under like terms and conditions at the time the qualified loan for housing
13 construction, development, acquisition or rehabilitation is made.

14 “(3) The maximum amount of credit for the difference between the
15 amounts described in subsection (2)(a) and (b) of this section may not exceed
16 four percent of the average unpaid balance of the qualified loan during the
17 tax year for which the credit is claimed.

18 “(4) Any tax credit allowed under this section that is not used by the
19 taxpayer in a particular year may be carried forward and offset against the
20 taxpayer’s tax liability for the next succeeding tax year. Any credit remain-
21 ing unused in the next succeeding tax year may be carried forward and used
22 in the second succeeding tax year, and likewise, any credit not used in that
23 second succeeding tax year may be carried forward and used in the third
24 succeeding tax year, and any credit not used in that third succeeding tax
25 year may be carried forward and used in the fourth succeeding tax year, and
26 any credit not used in that fourth succeeding tax year may be carried for-
27 ward and used in the fifth succeeding tax year, but may not be carried for-
28 ward for any tax year thereafter.

29 “(5) To be eligible for the tax credit allowable under this section, a
30 lending institution must make a qualified loan by either purchasing bonds,

1 as defined in ORS 286A.001, issued on behalf of the Housing and Community
2 Services Department, the proceeds of which are used to finance or refinance
3 a loan that meets the criteria stated in this subsection, or by making a loan
4 directly to:

5 “(a) An individual or individuals who own a dwelling, participate in an
6 owner-occupied community rehabilitation program and are certified by the
7 local government or its designated agent as having an income level when the
8 loan is made of less than 80 percent of the area median income;

9 “(b) A qualified borrower who:

10 “(A) Uses the loan proceeds to finance construction, development, acqui-
11 sition or rehabilitation of housing; and

12 “(B) Provides a written certification executed by the Housing and Com-
13 munity Services Department that the:

14 “(i) Housing created by the loan is or will be occupied by households
15 earning less than 80 percent of the area median income; and

16 “(ii) Full amount of savings from the reduced interest rate provided by
17 the lending institution is or will be passed on to the tenants in the form of
18 reduced housing payments;

19 “(c) Subject to subsection (14) of this section, a qualified borrower who:

20 “(A) Uses the loan proceeds to finance construction, development, acqui-
21 sition or rehabilitation of housing consisting of a manufactured dwelling
22 park; and

23 “(B) Provides a written certification executed by the Housing and Com-
24 munity Services Department that the housing will continue to be operated
25 as a manufactured dwelling park during the period for which the tax credit
26 is allowed; or

27 “(d) A qualified borrower who:

28 “(A) Uses the loan proceeds to finance acquisition or rehabilitation of
29 housing consisting of a preservation project; and

30 “(B) Provides a written certification executed by the Housing and Com-

1 munity Services Department that the housing preserved by the loan:

2 “(i) Is or will be occupied by households earning less than 80 percent of
3 the area median income; and

4 “(ii) Is the subject of a rent assistance contract with the United States
5 Department of Housing and Urban Development or the United States De-
6 partment of Agriculture that will be maintained by the qualified borrower.

7 “(6) A loan made to refinance a loan that meets the criteria stated in
8 subsection (5) of this section must be treated the same as a loan that meets
9 the criteria stated in subsection (5) of this section.

10 “(7) For a qualified loan to be eligible for the tax credit allowable under
11 this section, the Housing and Community Services Department must execute
12 a written certification for the qualified loan that:

13 “(a) Specifies the period, not to exceed 20 years, as determined by the
14 Housing and Community Services Department, during which the tax credit
15 is allowed for the qualified loan; and

16 “(b) States that the qualified loan is within the limitation imposed by
17 subsection (8) of this section.

18 “(8) The Housing and Community Services Department may certify quali-
19 fied loans that are eligible under subsection (5) of this section if the total
20 credits attributable to all qualified loans eligible for credits under this sec-
21 tion and then outstanding do not exceed \$25 million for any fiscal year. In
22 making loan certifications under subsection (7) of this section, the Housing
23 and Community Services Department shall attempt to distribute the tax
24 credits statewide, but shall concentrate the tax credits in those areas of the
25 state that are determined by the Oregon Housing Stability Council to have
26 the greatest need for affordable housing.

27 “(9) The tax credit provided for in this section may be taken whether or
28 not:

29 “(a) The financial institution is eligible to take a federal income tax
30 credit under section 42 of the Internal Revenue Code with respect to the

1 project financed by the qualified loan; or

2 “(b) The project receives financing from bonds, the interest on which is
3 exempt from federal taxation under section 103 of the Internal Revenue Code.

4 “(10) For a qualified loan defined in subsection (1)(i)(B) of this section
5 financed through the purchase of bonds, the interest of which is exempt from
6 federal taxation under section 103 of the Internal Revenue Code, the amount
7 of finance charge that would have been charged under subsection (2)(b) of
8 this section is determined by reference to the finance charge that would have
9 been charged if the federally tax exempt bonds had been issued and the tax
10 credit under this section did not apply.

11 “(11) A lending institution may sell a qualified loan for which a certi-
12 fication has been executed to a qualified assignee whether or not the lending
13 institution retains servicing of the qualified loan so long as a designated
14 lending institution maintains records, annually verified by a loan servicer,
15 that establish the amount of tax credit earned by the taxpayer throughout
16 each year of eligibility.

17 “(12) Notwithstanding any other provision of law, a lending institution
18 that is a community development corporation organized under the Oregon
19 Nonprofit Corporation Law may transfer all or part of a tax credit allowed
20 under this section to one or more other lending institutions that are stock-
21 holders or members of the community development corporation or that oth-
22 erwise participate through the community development corporation in the
23 making of one or more qualified loans for which the tax credit under this
24 section is allowed.

25 “(13) The lending institution shall file an annual statement with the
26 Housing and Community Services Department, specifying that it has con-
27 formed with all requirements imposed by law to qualify for a tax credit under
28 this section.

29 “(14) Notwithstanding subsection (1)(h) and (j) of this section, a qualified
30 borrower on a loan to finance the construction, development, acquisition or

1 rehabilitation of a manufactured dwelling park under subsection (5)(c) of this
2 section must be:

3 **“(a) A nonprofit corporation, manufactured dwelling park nonprofit co-
4 operative, state governmental entity, local unit of government as defined in
5 ORS 466.706 or housing authority; or**

6 **“(b) A nonprofit corporation or housing authority that has a con-
7 trolling interest in the real property that is financed by a qualified
8 loan. A controlling interest includes a controlling interest in the gen-
9 eral partner of a limited partnership that owns the real property.**

10 **“(15) The Housing and Community Services Department and the Depart-
11 ment of Revenue may adopt rules to carry out the provisions of this section.**

12 **“SECTION 4. The amendments to ORS 315.176, 315.184 and 317.097
13 by sections 1 to 3 of this 2018 Act apply to tax years beginning on or
14 after January 1, 2018.**

15 **“SECTION 5. ORS 315.516 is amended to read:**

16 **“315.516. (1) In lieu of the issuance of certifications for tax credit under
17 ORS 315.514 by the Oregon Film and Video Office, the Legislative Assembly
18 may, no later than 30 days prior to the end of each fiscal year, appropriate
19 to the Oregon Business Development Department for deposit into the Oregon
20 Production Investment Fund an amount equal to the total amount that would
21 otherwise be certified for tax credits during the **current or** upcoming fiscal
22 year, based on the amount of contributions and accompanying applications
23 for credit received by the office during the fiscal year **and reduced by the
24 amount, if any, previously certified for the credit for the correspond-
25 ing fiscal year.****

26 **“(2) If the Legislative Assembly makes the election allowed in subsection
27 (1) of this section:**

28 **“(a) No additional amount of credits may be certified for the cor-
29 responding fiscal year; and**

30 **“[(a)] (b) Any contributions to the Oregon Production Investment Fund**

1 made for the upcoming fiscal year and for which an application for a credit
2 under ORS 315.514 is [*pending*] **denied** shall, at the request of the taxpayer,
3 be refunded by the Oregon Film and Video Office[; *and*].

4 “[(b) A credit under ORS 315.514 may not be claimed for any contribution
5 made during the current fiscal year.]

6 “**SECTION 6. The amendments to ORS 315.516 by section 5 of this
7 2018 Act apply to fiscal years beginning on or after July 1, 2017.**

8 “**SECTION 7. This 2018 Act takes effect on the 91st day after the
9 date on which the 2018 regular session of the Seventy-ninth Legislative
10 Assembly adjourns sine die.”**

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