

House Bill 2096

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Housing and Community Services Department)

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**.

Authorizes Housing and Community Services Department to enter into certain transactions with respect to agriculture workforce housing tax credits. Increases maximum credits issued to \$24 million per biennium.

Renames "Farmworker Housing Development Account" to "Agricultural Worker Housing Development Account."

A BILL FOR AN ACT

1
2 Relating to agriculture workforce housing tax credits; creating new provisions; and amending ORS
3 315.163, 315.167, 315.169, 458.620, 458.660, 654.086, 658.453 and 658.815.

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

5 **SECTION 1.** ORS 315.169 is amended to read:

6 315.169. (1) A taxpayer that is a contributor is allowed a credit against the taxes otherwise due
7 under ORS chapter 316, if the taxpayer is a resident individual, or ORS chapter 317, if the taxpayer
8 is a corporation, to the extent the owner or operator of agriculture workforce housing transferred
9 all or a portion of the credit allowed to the owner or operator under ORS 315.164.

10 (2) An owner or operator of agriculture workforce housing may transfer all or a portion of the
11 credit allowed to the owner or operator under ORS 315.164 to one or more contributors, but the
12 amount transferred may not total more than the total credit the owner or operator may claim. The
13 transfer must comply with ORS 315.056.

14 (3) To receive a credit under this section:

15 (a) The contributor must obtain a letter of credit approval from the Housing and Community
16 Services Department under ORS 315.167; or

17 (b) If the owner or operator of agriculture workforce housing elects to transfer all or a portion
18 of the credit allowed under ORS 315.164 after the date that a letter of credit approval has been is-
19 sued to the owner or operator, the owner or operator and the contributor must comply with ORS
20 315.056.

21 (4) A contributor remains eligible to receive a credit under this section even if the owner or
22 operator of the agriculture workforce housing becomes ineligible for the credit as a result of:

23 (a) Failure to file the annual certification under ORS 315.164 (6);

24 (b) Failure to continue to substantially comply with occupational safety or health laws, rules,
25 regulations or standards under ORS 315.164 (10);

26 (c) Failure to register as a farmworker camp with the Department of Consumer and Business
27 Services under ORS 658.750;

28 (d) Failure of the operator to hold a valid indorsement as a farmworker camp operator under
29 ORS 658.730; or

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 (e) Failure to comply with any other rules or provisions relating to the operation or mainte-
 2 nance of the agriculture workforce housing after work on the agriculture workforce housing project
 3 has been completed.

4 (5)(a) The credit allowed under this section may be taken for the tax year in which the agri-
 5 culture workforce housing project is completed or in any of the nine tax years succeeding the tax
 6 year in which the project is completed.

7 (b) The credit allowed in any one tax year may not exceed 20 percent of the amount determined
 8 under subsection (2) of this section that was transferred to the contributor claiming the credit.

9 (6) Except as provided under subsection (7) of this section, the credit allowed in any one year
 10 may not exceed the tax liability of the taxpayer.

11 (7) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
 12 particular tax year may be carried forward and offset against the taxpayer's tax liability for the next
 13 succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried
 14 forward and used in the second succeeding tax year, and likewise any credit not used in that second
 15 succeeding tax year may be carried forward and used in the third succeeding tax year, and any
 16 credit not used in that third succeeding tax year may be carried forward and used in the fourth
 17 succeeding tax year, and any credit not used in that fourth succeeding tax year may be carried
 18 forward and used in the fifth succeeding tax year, and any credit not used in that fifth succeeding
 19 tax year may be carried forward and used in the sixth succeeding tax year, and any credit not used
 20 in that sixth succeeding tax year may be carried forward and used in the seventh succeeding tax
 21 year, and any credit not used in that seventh succeeding tax year may be carried forward and used
 22 in the eighth succeeding tax year, and any credit not used in that eighth succeeding tax year may
 23 be carried forward and used in the ninth succeeding tax year, but may not be carried forward for
 24 any tax year thereafter.

25 (8)(a) A nonresident individual shall be allowed the credit computed in the same manner and
 26 subject to the same limitations as the credit allowed a resident by this section. However, the credit
 27 shall be prorated using the proportion provided in ORS 316.117.

28 (b) If a change in the tax year of a taxpayer occurs as described in ORS 314.085, or if the De-
 29 partment of Revenue terminates the taxpayer's tax year under ORS 314.440, the credit allowed by
 30 this section shall be prorated or computed in a manner consistent with ORS 314.085.

31 (c) If a change in the status of a taxpayer from resident to nonresident or from nonresident to
 32 resident occurs, the credit allowed by this section shall be determined in a manner consistent with
 33 ORS 316.117.

34 **(9) Notwithstanding ORS 315.056, the Housing and Community Services Department may:**

35 **(a) Buy, sell, hold, lease or pledge credits or letters of credit approval or enter into any**
 36 **contract or agreement involving credits or letters of credit approval.**

37 **(b) Act as an agent for an owner, operator or contributor with respect to credits or let-**
 38 **ters of credit approval.**

39 **(c) Be a contributor.**

40 **(10) Notwithstanding ORS 315.052, the Housing and Community Services Department and**
 41 **any other public body may resell a credit that it purchases or acquires.**

42 **(11) The Housing and Community Services Department may deposit funds into, or expend**
 43 **funds from, the Agricultural Worker Housing Development Account of the Oregon Housing**
 44 **Fund to facilitate transactions involving credits or letters of credit approval under sub-**
 45 **section (9) of this section. However, the Housing and Community Services Department may**

1 **not enter into an agreement where the Housing and Community Services Department retains**
 2 **any net benefit from a transaction. Any benefit from a transaction must be transferred to**
 3 **an owner or operator or to a contributor other than the Housing and Community Services**
 4 **Department.**

5 [(9)] (12)(a) **Except as provided in paragraph (b) of this subsection,** the Department of Re-
 6 venue may adopt rules for carrying out the provisions of this section.

7 **(b) The Housing and Community Services Department, in consultation with the Depart-**
 8 **ment of Revenue, may adopt rules for carrying out the provisions of subsections (9) to (11)**
 9 **of this section.**

10 **SECTION 2.** ORS 315.167 is amended to read:

11 315.167. (1) Prior to the completion of an agriculture workforce housing project for which credit
 12 under ORS 315.164 will be claimed, an owner or operator of agriculture workforce housing shall
 13 apply to the Housing and Community Services Department for a letter of credit approval.

14 (2) The application shall be on such form as is prescribed by the Housing and Community Ser-
 15 vices Department and shall provide:

16 (a) The name, address and taxpayer identification number of the taxpayer;

17 (b) The location of the proposed agriculture workforce housing;

18 (c) A description of the project identifying the type of housing that is the subject of the agri-
 19 culture workforce housing project;

20 (d) An estimate of the eligible costs of the agriculture workforce housing project;

21 (e) The number of units in the project dedicated to agriculture workforce housing and the eli-
 22 gible costs associated with the units;

23 (f) The amount of credit to be claimed by the owner or operator of agriculture workforce hous-
 24 ing, and the amount of credit, if any, to be claimed by a contributor under ORS 315.169; and

25 (g) Any other information as the Housing and Community Services Department may require.

26 (3) The Housing and Community Services Department may review applications using any rea-
 27 sonable system of prioritizing review established by department rule.

28 (4) [*Applications filed in compliance with this section shall be approved by the Housing and Com-*
 29 *munity Services Department to the extent that the total of estimated eligible costs for all approved ag-*
 30 *riculture workforce housing projects for the calendar year is equal to or less than \$7.25 million. No*
 31 *application shall be approved if the addition of the estimated eligible costs of the project to the esti-*
 32 *mated eligible costs for all approved projects for the calendar year would exceed \$7.25 million] **The**
 33 **Housing and Community Services Department may approve an application under this section**
 34 **only if the potential credits of the project would not cause the total potential credits claimed**
 35 **under ORS 315.164 (1) for all approved applications to exceed \$24 million within the biennium**
 36 **in which the application is approved.***

37 (5) Upon approval of an application, the Housing and Community Services Department shall
 38 prepare a letter of credit approval. The letter shall state the approved amount of estimated eligible
 39 costs for the agriculture workforce housing project and, if applicable, the portion of credit to be
 40 claimed by an owner or operator of agriculture workforce housing under ORS 315.164 and the por-
 41 tion of credit to be claimed by a contributor under ORS 315.169. The letter shall be sent:

42 (a) To the owner or operator of agriculture workforce housing, if any credit is to be claimed
 43 under ORS 315.164; and

44 (b) To the contributor, if any credit is to be claimed under ORS 315.169 and if the contributor
 45 has been identified at the time of approval.

1 (6) At the conclusion of each calendar year, the Housing and Community Services Department
 2 shall send a list of the names, addresses and taxpayer identification numbers of taxpayers to whom
 3 a letter of credit approval has been issued under this section during the calendar year, along with
 4 approved amounts of estimated eligible costs for each agriculture workforce housing project, to the
 5 Department of Revenue.

6 (7) Notwithstanding that a letter of credit approval has been issued to a taxpayer under this
 7 section, the Department of Revenue may disallow, in whole or in part, a claim for credit under ORS
 8 315.164 upon the Department of Revenue's determination that under the provisions of ORS 315.164
 9 the taxpayer is not entitled to the credit or is only entitled to a portion of the amount claimed.

10 **SECTION 3.** ORS 315.163 is amended to read:

11 315.163. As used in ORS 315.163 to 315.169:

12 (1)(a) "Acquisition costs" means the cost of acquiring buildings, structures and improvements
 13 that constitute or will constitute agriculture workforce housing.

14 (b) "Acquisition costs" does not include the cost of acquiring land on which agriculture
 15 workforce housing is or will be located.

16 (2) "Agricultural worker" means any person who, for an agreed remuneration or rate of pay,
 17 performs temporary or permanent labor for another in the:

18 (a) Production of agricultural or aquacultural crops or products;

19 (b) Handling of agricultural or aquacultural crops or products in an unprocessed stage;

20 (c) Processing of agricultural or aquacultural crops or products;

21 (d) Planting, cultivating or harvesting of seasonal agricultural crops; or

22 (e) Forestation or reforestation of lands, including but not limited to the planting, transplanting,
 23 tubing, precommercial thinning and thinning of trees and seedlings, the clearing, piling and disposal
 24 of brush and slash and other related activities.

25 (3) "Agriculture workforce housing" means housing:

26 (a) Limited to occupancy by agricultural workers, including agricultural workers who are re-
 27 tired or disabled, and their immediate families; and

28 (b) No dwelling unit of which is occupied by a relative of the owner or operator of the agricul-
 29 ture workforce housing, except in the case of a manufactured dwelling in a manufactured dwelling
 30 park nonprofit cooperative as defined in ORS 62.803.

31 (4) "Agriculture workforce housing project" means the acquisition, construction, installation or
 32 rehabilitation of agriculture workforce housing.

33 (5) "Condition of habitability" means a condition that is in compliance with:

34 (a) The applicable provisions of the state building code under ORS chapter 455 and the rules
 35 adopted thereunder; or

36 (b) If determined on or before December 31, 1995, sections 12 and 13, chapter 964, Oregon Laws
 37 1989.

38 (6) "Contributor" means a person **or public body**:

39 (a) That acquired, constructed, manufactured or installed agriculture workforce housing or
 40 contributed money to finance an agriculture workforce housing project; or

41 (b) That has purchased or otherwise received via transfer a credit as provided in ORS 315.169
 42 (2).

43 (7) "Eligible costs" includes acquisition costs, finance costs, construction costs, excavation costs,
 44 installation costs and permit costs and excludes land costs.

45 (8)(a) "Owner" means a person that owns agriculture workforce housing.

1 (b) "Owner" does not include a person that only has an interest in the agriculture workforce
 2 housing as a holder of a security interest.

3 (9) "Rehabilitation" means to make repairs or improvements to a building that improve its
 4 livability and are consistent with applicable building codes.

5 (10) "Relative" means a brother or sister (whether by the whole or by half blood), spouse, an-
 6 cestor (whether by law or by blood), or lineal descendant of an individual.

7 (11) "Taxpayer" includes a nonprofit corporation, a tax-exempt entity or any other person not
 8 subject to tax under ORS chapter 316, 317 or 318.

9 **SECTION 4. (1) The amendments to ORS 458.620, 458.660, 654.086, 658.453 and 658.815 by**
 10 **sections 5 to 9 of this 2021 Act are intended to change the name of the "Farmworker Housing**
 11 **Development Account" to the "Agricultural Worker Housing Development Account."**

12 **(2) For the purpose of harmonizing and clarifying statutory law, the Legislative Counsel**
 13 **may substitute for words designating the "Farmworker Housing Development Account,"**
 14 **wherever they occur in statutory law, other words designating the "Agricultural Worker**
 15 **Housing Development Account."**

16 **SECTION 5.** ORS 458.660 is amended to read:

17 458.660. (1) Except as provided in subsection (2) of this section, the Housing and Community
 18 Services Department shall disburse the moneys credited to the [*Farmworker*] **Agricultural Worker**
 19 **Housing Development Account** to expand this state's supply of housing for low and very low income
 20 [*farmworkers*] **agricultural workers or to enter into transactions with respect to tax credits**
 21 **or letters of credit approval under ORS 315.169 (9).**

22 (2) The department may expend funds from the account for administration of the account as
 23 provided for in the legislatively approved budget, as that term is defined in ORS 291.002, for the
 24 department.

25 **SECTION 6.** ORS 458.620 is amended to read:

26 458.620. (1) There is created, separate and distinct from the General Fund of the State Treasury,
 27 the Oregon Housing Fund, which consists of six separate revolving accounts:

- 28 (a) The Housing Development and Guarantee Account;
- 29 (b) The Emergency Housing Account;
- 30 (c) The Home Ownership Assistance Account;
- 31 (d) The [*Farmworker*] **Agricultural Worker** Housing Development Account;
- 32 (e) The General Housing Account; and
- 33 (f) The Wildfire Damage Housing Relief Account.

34 (2) Earnings on investment of moneys in:

- 35 (a) The Housing Development and Guarantee Account accrue to that account.
- 36 (b) The Emergency Housing Account accrue to that account.
- 37 (c) The Home Ownership Assistance Account accrue to that account.
- 38 (d) The [*Farmworker*] **Agricultural Worker** Housing Development Account accrue to that ac-
 39 count.
- 40 (e) The General Housing Account accrue to that account.
- 41 (f) The Wildfire Damage Housing Relief Account accrue to that account.

42 (3)(a) Moneys in the Housing Development and Guarantee Account are continuously appropri-
 43 ated to the Housing and Community Services Department to carry out the provisions of ORS 458.630.

44 (b) Moneys in the Emergency Housing Account are continuously appropriated to the department
 45 to carry out the provisions of ORS 458.650.

1 (c) Moneys in the Home Ownership Assistance Account are continuously appropriated to the
2 department to carry out the provisions of ORS 458.655.

3 (d) Moneys in the [*Farmworker*] **Agricultural Worker** Housing Development Account are con-
4 tinuously appropriated to the department to carry out the provisions of ORS 458.660.

5 (e) Moneys in the General Housing Account are continuously appropriated to the department
6 to carry out the provisions of ORS 456.515 to 456.725.

7 (f) Moneys in the Wildfire Damage Housing Relief Account are continuously appropriated to the
8 department to carry out the provisions of ORS 458.667.

9 (4) Individuals and corporations, both for profit or nonprofit, may make monetary contributions
10 to be credited to:

11 (a) The Housing Development and Guarantee Account; or

12 (b) The General Housing Account.

13 **SECTION 6a.** ORS 458.620, as amended by section 39, chapter 10, Oregon Laws 2020 (second
14 special session), is amended to read:

15 458.620. (1) There is created, separate and distinct from the General Fund of the State Treasury,
16 the Oregon Housing Fund, which consists of five separate revolving accounts:

17 (a) The Housing Development and Guarantee Account;

18 (b) The Emergency Housing Account;

19 (c) The Home Ownership Assistance Account;

20 (d) The [*Farmworker*] **Agricultural Worker** Housing Development Account; and

21 (e) The General Housing Account.

22 (2) Earnings on investment of moneys in:

23 (a) The Housing Development and Guarantee Account accrue to that account.

24 (b) The Emergency Housing Account accrue to that account.

25 (c) The Home Ownership Assistance Account accrue to that account.

26 (d) The [*Farmworker*] **Agricultural Worker** Housing Development Account accrue to that ac-
27 count.

28 (e) The General Housing Account accrue to that account.

29 (3)(a) Moneys in the Housing Development and Guarantee Account are continuously appropri-
30 ated to the Housing and Community Services Department to carry out the provisions of ORS 458.630.

31 (b) Moneys in the Emergency Housing Account are continuously appropriated to the department
32 to carry out the provisions of ORS 458.650.

33 (c) Moneys in the Home Ownership Assistance Account are continuously appropriated to the
34 department to carry out the provisions of ORS 458.655.

35 (d) Moneys in the [*Farmworker*] **Agricultural Worker** Housing Development Account are con-
36 tinuously appropriated to the department to carry out the provisions of ORS 458.660.

37 (e) Moneys in the General Housing Account are continuously appropriated to the department
38 to carry out the provisions of ORS 456.515 to 456.725.

39 (4) Individuals and corporations, both for profit or nonprofit, may make monetary contributions
40 to be credited to:

41 (a) The Housing Development and Guarantee Account; or

42 (b) The General Housing Account.

43 **SECTION 7.** ORS 654.086 is amended to read:

44 654.086. (1) The Director of the Department of Consumer and Business Services or the author-
45 ized representative of the director has the authority to assess civil penalties as provided by this

1 section for violation of the requirements of a state occupational safety or health statute or the
2 lawful rules, standards or orders adopted under the statute. In setting maximum penalties, the di-
3 rector or the director's representative shall consider, but may not exceed, the maximum penalties
4 under the federal Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

5 (a) Any employer who receives a citation for a serious violation of such requirements shall be
6 assessed a civil penalty of not less than \$50.

7 (b) Any employer who receives a citation for a violation of such requirements, and such vio-
8 lation is specifically determined not to be of a serious nature, may be assessed a civil penalty.

9 (c) Any employer who willfully or repeatedly violates such requirements may be assessed a civil
10 penalty of not less than the minimum penalty under the federal Occupational Safety and Health Act
11 of 1970 (29 U.S.C. 651 et seq.).

12 (d) Any employer who receives a citation, as provided in ORS 654.071 (4), for failure to correct
13 a violation may be assessed a civil penalty for each day during which the violation continues.

14 (e) Any employer who knowingly makes any false statement, representation or certification re-
15 garding the correction of a violation shall be assessed a civil penalty of not less than \$100.

16 (f) Any employer who violates any of the posting requirements, as prescribed under the pro-
17 visions of ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780, may be assessed a civil
18 penalty for each violation.

19 (g) Any person who violates the provisions of ORS 654.082 (2) or (3) shall be assessed a civil
20 penalty of not less than \$100 for each violation.

21 (h) Notwithstanding paragraph (b) of this subsection, an employer who substantially fails to
22 comply with ORS 654.174 (1) shall be assessed a civil penalty of not less than \$250 for each violation.

23 (i) Any insurer or self-insured employer who violates any provision of ORS 654.097, or any rule
24 or order carrying out ORS 654.097, shall be assessed a civil penalty. Each violation, or each day a
25 violation continues, shall be considered a separate offense.

26 (2) For the purposes of ORS 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780 a se-
27 rious violation exists in a place of employment if there is a substantial probability that death or
28 serious physical harm could result from a condition which exists, or from one or more practices,
29 means, methods, operations or processes which have been adopted or are in use, in such place of
30 employment unless the employer did not, and could not with the exercise of reasonable diligence,
31 know of the presence of the violation.

32 (3) When an order assessing a civil penalty becomes final by operation of law or on appeal,
33 unless the amount of penalty is paid within 20 days after the order becomes final, it constitutes a
34 judgment and may be recorded with the county clerk in any county of this state. The clerk shall
35 thereupon record the name of the person incurring the penalty and the amount of the penalty in the
36 County Clerk Lien Record. The penalty provided in the order so recorded shall become a lien upon
37 the title to any interest in property owned by the person against whom the order is entered, and
38 execution may be issued upon the order in the same manner as execution upon a judgment of a court
39 of record.

40 (4) Except as provided in subsection (5) of this section, civil penalties collected under ORS
41 654.001 to 654.295, 654.412 to 654.423 and 654.750 to 654.780 shall be paid into the Consumer and
42 Business Services Fund.

43 (5) Civil penalties assessed under this section for a violation of ORS 658.750 shall be credited
44 to the [*Farmworker*] **Agricultural Worker** Housing Development Account of the Oregon Housing
45 Fund.

1 **SECTION 8.** ORS 658.453 is amended to read:

2 658.453. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau
3 of Labor and Industries may assess a civil penalty not to exceed \$2,000 for each violation by:

4 (a) A labor contractor who, without the license required by ORS 658.405 to 658.511, recruits,
5 solicits, supplies or employs a worker.

6 (b) A labor contractor who fails to comply with ORS 658.415 (16).

7 (c) A labor contractor who fails to comply with ORS 658.440 (1), (2)(c) or (3).

8 (d) Any person who violates ORS 658.452.

9 (e) A labor contractor who fails to comply with ORS 658.417 (1).

10 (f) Any person who uses an unlicensed labor contractor without complying with ORS 658.437.

11 (2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

12 (3) All penalties recovered under this section shall be paid into the State Treasury and credited
13 to the [*Farmworker*] **Agricultural Worker** Housing Development Account of the Oregon Housing
14 Fund.

15 (4) After filing a complaint with the commissioner, in addition to any other penalty provided by
16 law, a worker has a right of action against a labor contractor who violates ORS 658.417 (1) or (2),
17 658.440 or 658.452 without exhausting any alternative administrative remedies. The action may not
18 be commenced later than two years after the date of the violation giving rise to the right of action.
19 The amount of damages recoverable for each violation under this subsection is actual damages or
20 \$1,000, whichever amount is greater. In any such action the court may award to the prevailing
21 party, in addition to costs and disbursements, reasonable attorney fees at trial and appeal.

22 **SECTION 9.** ORS 658.815 is amended to read:

23 658.815. (1) All farmworker camp indorsement fees received by the Commissioner of the Bureau
24 of Labor and Industries under ORS 658.810 shall be credited to the Bureau of Labor and Industries
25 Account. Notwithstanding ORS 651.160 (1) and 658.413 (4), moneys credited to the account under this
26 subsection are continuously appropriated for the enforcement of ORS 658.705 to 658.850.

27 (2) Moneys collected from civil penalties imposed by the commissioner pursuant to ORS 658.850
28 for violations of ORS 658.750 shall be credited to the [*Farmworker*] **Agricultural Worker** Housing
29 Development Account of the Oregon Housing Fund.

30 (3) Except as provided in subsection (2) of this section, all moneys other than fees described in
31 ORS 658.413 received by the commissioner under ORS 658.705 to 658.850 shall be credited to the
32 General Fund.