

House Bill 2465

Sponsored by Representative NATHANSON; Representatives HOLVEY, LIVELY, PHAM K, Senators CAMPOS, GOLDEN, MANNING JR, PROZANSKI (at the request of SquareOne Villages) (Pre-session filed.)

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 purposes for which qualified borrower may use loan proceeds, in connection with tax credits allowed for affordable housing lenders, to include limited equity cooperatives, with certain conditions.

Applies to tax years beginning on or after January 1, 2024.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to a tax credit for affordable housing lenders; creating new provisions; amending ORS
3 317.097; and prescribing an effective date.

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

5 **SECTION 1.** ORS 317.097, as amended by section 25, chapter 83, Oregon Laws 2022, is amended
6 to read:

7 317.097. (1) As used in this section:

8 (a) "Annual rate" means the yearly interest rate specified on the note, and not the annual per-
9 centage rate, if any, disclosed to the applicant to comply with the federal Truth in Lending Act.

10 (b) "Bonds" means a bond, as defined in ORS 286A.001, if issued on behalf of the Housing and
11 Community Services Department, or bonds, as defined in ORS 456.055, if issued by a housing au-
12 thority.

13 (c) "Finance charge" means the total of all interest, loan fees, interest on any loan fees financed
14 by the lending institution, and other charges related to the cost of obtaining credit.

15 (d) "Lending institution" means any insured institution, as that term is defined in ORS 706.008,
16 any mortgage banking company that maintains an office in this state or any community development
17 corporation that is organized under the Oregon Nonprofit Corporation Law.

18 (e) "**Limited equity cooperative**" means a cooperative corporation formed under ORS
19 chapter 62 whose articles of incorporation, in addition to the other requirements of ORS
20 chapter 62, prohibit members from selling their ownership interests:

21 (A) To any person other than a low income person; or

22 (B) For a sales price that exceeds the sum of:

23 (i) The price the member paid for the ownership interest;

24 (ii) The cost of any permanent improvements the member made to the housing unit
25 during the member's ownership;

26 (iii) Any special assessments the member paid to the limited equity cooperative during
27 the member's ownership that were expended to make permanent improvements to the
28 building in which the member's housing unit is located; and

29 (iv) A return on the amounts described in sub-subparagraphs (i) to (iii) of this subpara-

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 **graph, computed by adjusting each amount by the percentage increase, if any, in the Con-**
 2 **sumer Price Index for All Urban Consumers, West Region (All Items), as published by the**
 3 **Bureau of Labor Statistics of the United States Department of Labor, from the year in which**
 4 **the respective amount was paid.**

5 [(e)] (f) “Manufactured dwelling park” has the meaning given that term in ORS 446.003.

6 [(f)] (g) “Nonprofit corporation” means a corporation that is exempt from income taxes under
 7 section 501(c)(3) or (4) of the Internal Revenue Code as amended and in effect on December 31, 2021.

8 [(g)] (h) “Preservation project” means housing that was previously developed as affordable
 9 housing with a contract for rent assistance from the United States Department of Housing and Ur-
 10 ban Development or the United States Department of Agriculture and that is being acquired by a
 11 sponsoring entity.

12 [(h)] (i) “Qualified assignee” means any investor participating in the secondary market for real
 13 estate loans.

14 [(i)] (j) “Qualified borrower” means any borrower that is a sponsoring entity that has a con-
 15 trolling interest in the real property that is financed by a qualified loan. A controlling interest in-
 16 cludes a controlling interest in the general partner of a limited partnership that owns the real
 17 property.

18 [(j)] (k) “Qualified loan” means:

19 (A) A loan that meets the criteria stated in subsection (5) of this section or that is made to re-
 20 finance a loan that meets the criteria described in subsection (5) of this section; or

21 (B) The purchase by a lending institution of bonds, the proceeds of which are used to finance
 22 or refinance a loan that meets the criteria described in subsection (5) of this section.

23 [(k)] (L) “Sponsoring entity” means a nonprofit corporation, nonprofit cooperative, state gov-
 24 ernmental entity, local unit of government as defined in ORS 466.706, housing authority or any other
 25 person, provided that the person has agreed to restrictive covenants imposed by a nonprofit corpo-
 26 ration, nonprofit cooperative, state governmental entity, local unit of government or housing au-
 27 thority.

28 (2) The Department of Revenue shall allow a credit against taxes otherwise due under this
 29 chapter for the tax year to a lending institution that makes a qualified loan certified by the Housing
 30 and Community Services Department as provided in subsection (7) of this section. The amount of the
 31 credit is equal to the difference between:

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

35 (b) The amount of finance charge that would have been charged during the tax year by the
 36 lending institution for the qualified loan for housing construction, development, acquisition or re-
 37 habilitation measured at the annual rate charged by the lending institution for nonsubsidized loans
 38 made under like terms and conditions at the time the qualified loan for housing construction, de-
 39 velopment, acquisition or rehabilitation is made.

40 (3) The maximum amount of credit for the difference between the amounts described in sub-
 41 section (2)(a) and (b) of this section may not exceed four percent of the average unpaid balance of
 42 the qualified loan during the tax year for which the credit is claimed.

43 (4) Any tax credit allowed under this section that is not used by the taxpayer in a particular
 44 year may be carried forward and offset against the taxpayer’s tax liability for the next succeeding
 45 tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and

1 used in the second succeeding tax year, and likewise, any credit not used in that second succeeding
 2 tax year may be carried forward and used in the third succeeding tax year, and any credit not used
 3 in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year,
 4 and any credit not used in that fourth succeeding tax year may be carried forward and used in the
 5 fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

6 (5) To be eligible for the tax credit allowable under this section, a lending institution must make
 7 a qualified loan by either purchasing bonds, the proceeds of which are used to finance or refinance
 8 a loan that meets the criteria stated in this subsection, or making a loan directly to:

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

12 (b) A qualified borrower who:

13 (A) Uses the loan proceeds to finance construction, development, acquisition or rehabilitation
 14 of housing, **including housing in the form of a limited equity cooperative**; and

15 (B) Provides a written certification executed by the Housing and Community Services Depart-
 16 ment that the:

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

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

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

22 (A) Uses the loan proceeds to finance construction, development, acquisition or rehabilitation
 23 of housing consisting of a manufactured dwelling park; and

24 (B) Provides a written certification executed by the Housing and Community Services Depart-
 25 ment that the housing will continue to be operated as a manufactured dwelling park during the pe-
 26 riod for which the tax credit is allowed;

27 (d) A qualified borrower who:

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

30 (B) Provides a written certification executed by the Housing and Community Services Depart-
 31 ment that the housing preserved by the loan:

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

34 (ii) Is the subject of a rent assistance contract with the United States Department of Housing
 35 and Urban Development or the United States Department of Agriculture that will be maintained by
 36 the qualified borrower; or

37 (e) A qualified borrower who:

38 (A) Uses the loan proceeds to finance construction, development, acquisition or rehabilitation
 39 of housing; and

40 (B) Provides a written certification executed by the Housing and Community Services Depart-
 41 ment or the governmental party to the rent assistance contract that the housing preserved by the
 42 loan:

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

45 (ii) Is the subject of a rent assistance contract with the federal government or with a state or

1 local government that will be maintained by the qualified borrower and that limits a tenant's rent
2 to no more than 30 percent of their income.

3 (6) A loan made to refinance a loan that meets the criteria stated in subsection (5) of this sec-
4 tion must be treated the same as a loan that meets the criteria stated in subsection (5) of this sec-
5 tion.

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

8 (a) States that the qualified loan is within the limitation imposed by subsection (8) of this sec-
9 tion; and

10 (b) Specifies the period, as determined by the Housing and Community Services Department,
11 during which the tax credit is allowed for the qualified loan, not to exceed:

12 (A) 30 years, for a qualified loan with a contract for rent assistance or financing resources from
13 the United States Department of Agriculture, for new housing construction, acquisition of housing
14 or a preservation project; or

15 (B) 20 years, for any other type of qualified loan.

16 (8) The Housing and Community Services Department may certify qualified loans that are eligi-
17 ble under subsection (5) of this section if the total credits attributable to all qualified loans eligible
18 for credits under this section and then outstanding do not exceed \$35 million for any fiscal year. In
19 making loan certifications under subsection (7) of this section, the Housing and Community Services
20 Department shall attempt to distribute the tax credits statewide, but shall concentrate the tax
21 credits in those areas of the state that are determined by the Oregon Housing Stability Council to
22 have the greatest need for affordable housing.

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

24 (a) The financial institution is eligible to take a federal income tax credit under section 42 of
25 the Internal Revenue Code with respect to the project financed by the qualified loan; or

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

28 (10) For a qualified loan defined in subsection [(1)(j)(B)] **(1)(k)(B)** of this section financed
29 through the purchase of bonds, the interest of which is exempt from federal taxation under section
30 103 of the Internal Revenue Code, the amount of finance charge that would have been charged under
31 subsection (2)(b) of this section is determined by reference to the finance charge that would have
32 been charged if the federally tax exempt bonds had been issued and the tax credit under this section
33 did not apply.

34 (11) A lending institution may sell a qualified loan for which a certification has been executed
35 to a qualified assignee whether or not the lending institution retains servicing of the qualified loan
36 so long as a designated lending institution maintains records, annually verified by a loan servicer,
37 that establish the amount of tax credit earned by the taxpayer throughout each year of eligibility.

38 (12) Notwithstanding any other provision of law, a lending institution that is a community de-
39 velopment corporation organized under the Oregon Nonprofit Corporation Law may transfer all or
40 part of a tax credit allowed under this section to one or more other lending institutions that are
41 stockholders or members of the community development corporation or that otherwise participate
42 through the community development corporation in the making of one or more qualified loans for
43 which the tax credit under this section is allowed.

44 (13) The lending institution shall file an annual statement with the Housing and Community
45 Services Department, specifying that it has conformed with all requirements imposed by law to

1 qualify for a tax credit under this section.

2 (14) Notwithstanding subsection [(1)(i) and (k)] **(1)(j) and (L)** of this section, a qualified borrower
3 on a loan to finance the construction, development, acquisition or rehabilitation of a manufactured
4 dwelling park under subsection (5)(c) of this section must be:

5 (a) A nonprofit corporation, manufactured dwelling park nonprofit cooperative, state govern-
6 mental entity, local unit of government as defined in ORS 466.706 or housing authority; or

7 (b) A nonprofit corporation or housing authority that has a controlling interest in the real
8 property that is financed by a qualified loan. A controlling interest includes a controlling interest
9 in the general partner of a limited partnership that owns the real property.

10 (15) The Department of Revenue may require that a lending institution that has earned the
11 credit and a lending institution that intends to claim the credit jointly file a notice, as prescribed
12 by the Department of Revenue. The notice must comply with ORS 315.056 (2) or 315.058 (2).

13 (16) The Housing and Community Services Department shall provide information to the Depart-
14 ment of Revenue about all certifications executed under this section, if required by ORS 315.058.

15 (17) The Housing and Community Services Department and the Department of Revenue may
16 adopt rules to carry out the provisions of this section.

17 **SECTION 2. The amendments to ORS 317.097 by section 1 of this 2023 Act apply to tax**
18 **years beginning on or after January 1, 2024.**

19 **SECTION 3. This 2023 Act takes effect on the 91st day after the date on which the 2023**
20 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

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