

House Bill 3302

Sponsored by Representative RAYFIELD (at the request of Willamette Valley Legislative Fellowship)

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**.

Creates income or corporate excise tax credit for investment in affordable housing, available to taxpayer eligible for federal low-income housing credit, and allocated by Housing and Community Services Department.

Applies to tax years beginning on or after January 1, 2024, and before January 1, 2039.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to a tax credit for investment in affordable housing; creating new provisions; amending
3 ORS 314.772 and 318.031; and prescribing an effective date.

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

5 **SECTION 1. Sections 2 to 7 of this 2023 Act are added to and made a part of ORS chapter**
6 **315.**

7 **SECTION 2. As used in sections 2 to 7 of this 2023 Act:**

8 (1) "Allocation certificate" means a statement issued by the Housing and Community
9 Services Department certifying that a given development is eligible for the credit and speci-
10 fying the amount of the credit allowed.

11 (2) "Credit period" means the period of six tax years beginning with the tax year in which
12 the final building of a qualified development is placed in service.

13 (3) "Federal tax credit" means the federal low-income housing tax credit provided by
14 section 42 of the Internal Revenue Code.

15 (4) "Pass-through certification" means a certification provided to the Director of the
16 Department of Revenue by any pass-through entity allocating a credit to its partners or
17 members, certifying the amount of credit to be allocated to each partner or member of the
18 pass-through entity.

19 (5) "Pass-through entity" has the meaning given that term in ORS 314.410.

20 (6) "Qualified allocation plan" means the qualified allocation plan adopted by the Housing
21 and Community Services Department pursuant to section 42(m) of the Internal Revenue
22 Code.

23 (7) "Qualified basis" means the qualified basis of a qualified development as determined
24 pursuant to section 42 of the Internal Revenue Code.

25 (8) "Qualified development" means a qualified low-income housing project, as that term
26 is described in section 42 of the Internal Revenue Code, that is located in Oregon and that
27 is determined by the Housing and Community Services Department to be eligible for a federal
28 tax credit, whether or not a federal tax credit is allocated with respect to the qualified de-
29 velopment.

30 (9) "Qualified taxpayer" means a taxpayer that owns an interest, direct or indirect, in a

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 qualified development.

2 **SECTION 3.** (1) A credit against taxes that are otherwise due under ORS chapter 316 or,
 3 if the taxpayer is a corporation, under ORS chapter 317 or 318 is allowed to a qualified tax-
 4 payer. The credit under this section shall be allowed in each year of the credit period, and
 5 shall be in an amount equal to 30 percent of the taxpayer’s qualified basis in the qualified
 6 development.

7 (2) Prior to claiming the credit allowed under this section, a qualified taxpayer is required
 8 to receive an allocation certificate from the Housing and Community Services Department
 9 as provided in section 4 of this 2023 Act.

10 (3) The credit allowed under this section may not exceed the tax liability of the taxpayer
 11 for the tax year.

12 (4) Any tax credit otherwise allowable under this section that is not used by the taxpayer
 13 in a particular tax year may be carried forward and offset against the taxpayer’s tax liability
 14 for the next succeeding tax year. Any credit remaining unused in the next succeeding tax
 15 year may be carried forward and used in the second succeeding tax year, and likewise any
 16 credit not used in that second succeeding tax year may be carried forward and used in the
 17 third succeeding tax year but may not be carried forward for any tax year thereafter.

18 (5) If a change in the tax year of the taxpayer occurs as described in ORS 314.085, or if
 19 the Department of Revenue terminates the taxpayer’s tax year under ORS 314.440, the credit
 20 allowed under this section shall be prorated or computed in a manner consistent with ORS
 21 314.085.

22 (6) The department shall adopt rules for the purposes of this section, including policies
 23 and procedures for verifying taxpayer eligibility for the credit allowed under this section.

24 (7) The Housing and Community Services Department shall provide information to the
 25 Department of Revenue about all taxpayers that are eligible for a tax credit under this sec-
 26 tion, if required by ORS 315.058.

27 (8) The Director of the Housing and Community Services Department may order the
 28 suspension or revocation of a certification issued under section 4 of this 2023 Act, as provided
 29 in ORS 315.061, for the reasons set forth in ORS 315.061 or if the holder of the certificate fails
 30 to meet Housing and Community Services Department requirements.

31 **SECTION 4.** (1) The Housing and Community Services Department may issue an allo-
 32 cation certificate to an owner of a qualified development to which a credit has been allocated
 33 under section 42 of the Internal Revenue Code. The Housing and Community Services De-
 34 partment shall issue an allocation certificate to the qualified development simultaneously
 35 with the issuance of federal certification with respect to the federal tax credits.

36 (2) All allocations under this section shall be made pursuant to a qualified allocation plan.

37 (3) If an owner of a qualified development receiving an allocation of a credit is a pass-
 38 through entity, the owner may allocate the credit among its partners or members in any
 39 manner agreed to by these persons regardless of whether:

40 (a) The person is allocated or allowed any portion of any federal tax credit with respect
 41 to the qualified project;

42 (b) The allocation of the credit under the terms of the agreement has substantial eco-
 43 nomic effect within the meaning of section 704(b) of the Internal Revenue Code; or

44 (c) The person is deemed a partner for federal income tax purposes, if the partner or
 45 member would be considered a partner or member under Oregon law governing the entity

1 and has been admitted as a partner or member on or prior to the date for filing the qualified
 2 taxpayer's tax return, including any amendments to the tax return, with respect to the year
 3 of the credit. In the case of multiple tiers of pass-through entities, the credit may be so al-
 4 located through any number of pass-through entities in any manner agreed by the owners
 5 of the pass-through entities, none of which shall be considered a transfer. Any pass-through
 6 entity allocating a credit to its partners or members shall attach a pass-through certification
 7 to its tax return annually. Each partner or member shall be allowed to claim or further al-
 8 locate that amount subject to any restrictions set forth in sections 2 to 7 of this 2023 Act.

9 (4) An owner of a qualified development to which a credit has been allocated and each
 10 qualified taxpayer to which the owner has allocated a portion of the credit, if any, shall file
 11 with their state tax return a copy of the allocation certificate issued by the Housing and
 12 Community Services Department with respect to the qualified development and a copy of any
 13 pass-through certification, as prescribed by the Director of the Department of Revenue.

14 (5) A credit may not be allocated pursuant to this section unless the qualified develop-
 15 ment is the subject of a recorded restrictive covenant requiring the development to be
 16 maintained and operated as a qualified development and is in accordance with the accessi-
 17 bility and adaptability requirements of the federal tax credits and Title VIII of the Civil
 18 Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, for a period
 19 of 15 tax years, or for a longer period as may be agreed to between the Housing and Com-
 20 munity Services Department and the owner of the qualified development, beginning with the
 21 first tax year of the credit period.

22 (6) Unless otherwise provided in sections 2 to 7 of this 2023 Act or the context or law
 23 requires otherwise, the Housing and Community Services Department shall determine eligi-
 24 bility for a credit and allocate credits in accordance with the standards and requirements set
 25 forth in section 42 of the Internal Revenue Code. Any combination of federal tax credits and
 26 credits allowed pursuant to sections 2 to 7 of this 2023 Act shall be the least amount neces-
 27 sary to ensure the financial feasibility of a qualified development.

28 **SECTION 5.** If, under section 42 of the Internal Revenue Code, a portion of any federal
 29 tax credit allowed for a qualified development is required to be recaptured or is otherwise
 30 disallowed during the credit period, the qualified taxpayer that claimed the credit pursuant
 31 to section 3 of this 2023 Act with respect to the qualified development shall also be required
 32 to recapture a portion of any credits authorized by sections 2 to 7 of this 2023 Act. The
 33 percentage of credits subject to recapture shall be equal to the percentage of federal tax
 34 credits subject to recapture or otherwise disallowed during that period. Any credits recap-
 35 tured or disallowed shall increase the tax liability of the qualified taxpayer who claimed the
 36 credits and shall be included on the tax return of the qualified taxpayer submitted for the
 37 taxable year in which the recapture or disallowance event is identified.

38 **SECTION 6.** (1) The Housing and Community Services Department, in consultation with
 39 the Director of the Department of Revenue, shall monitor and oversee compliance with the
 40 provisions of sections 2 to 7 of this 2023 Act and shall report specific occurrences of non-
 41 compliance to the Director of the Department of Revenue.

42 (2) Not later than February 15 of each year, the Housing and Community Services De-
 43 partment shall submit a report, in the manner required by ORS 192.245, to a committee of
 44 the Legislative Assembly related to revenue. The report shall address the immediately pre-
 45 ceding calendar year, and must, for each calendar year:

1 (a) Specify the number of qualified developments that have been allocated credits during
2 the year and the total number of units supported by each development;

3 (b) Describe each qualified development that has been allocated credits including, without
4 limitation, the geographic location of the development, the household type and any specific
5 demographic information available about residents intended to be served by the development,
6 the income levels intended to be served by the development and the rents or set-asides au-
7 thorized for each development; and

8 (c) Provide housing market and demographic information that demonstrates how the
9 qualified developments supported by the credits are addressing the need for affordable
10 housing within the communities they are intended to serve as well as information about any
11 remaining disparities in the affordability of housing within those communities.

12 **SECTION 7. The Housing and Community Services Department and the Department of**
13 **Revenue, in consultation with each other, shall adopt rules for administration of sections 2**
14 **to 7 of this 2023 Act.**

15 **SECTION 8.** ORS 314.772, as amended by section 11, chapter 34, Oregon Laws 2022, and section
16 15, chapter 115, Oregon Laws 2022, is amended to read:

17 314.772. (1) Except as provided in ORS 314.766 (5)(b), the tax credits allowed or allowable to a
18 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
19 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
20 allowable to the shareholders of the S corporation.

21 (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.763, on
22 income of the shareholder of an S corporation, there shall be taken into account the shareholder's
23 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but
24 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-
25 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the
26 manner prescribed under section 1377(a) of the Internal Revenue Code.

27 (3) The character of any item included in a shareholder's pro rata share under subsection (2)
28 of this section shall be determined as if such item were realized directly from the source from which
29 realized by the corporation, or incurred in the same manner as incurred by the corporation.

30 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
31 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
32 316.117, then that provision shall apply to the nonresident shareholder.

33 (5) As used in this section, "business tax credit" means the following credits: ORS 315.104
34 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141
35 (biomass production for biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture
36 workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent care assistance), ORS
37 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.237 (employee
38 and dependent scholarships), ORS 315.271 (individual development accounts), ORS 315.304 (pollution
39 control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy
40 conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy re-
41 source equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation facili-
42 ties), ORS 315.506 (tribal taxes on reservation enterprise zones and reservation partnership zones),
43 ORS 315.507 (electronic commerce), ORS 315.514 (film production development contributions), ORS
44 315.523 (employee training programs), ORS 315.533 (low income community jobs initiative), ORS
45 315.593 (short line railroads), ORS 315.640 (university venture development funds), ORS 315.643

1 (Opportunity Grant Fund contributions), ORS 315.675 (Trust for Cultural Development Account
 2 contributions), ORS 317.097 (loans for affordable housing), ORS 317.124 (long term enterprise zone
 3 facilities), ORS 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified research
 4 expenses) and ORS 317.154 (alternative qualified research expenses) and section 9, chapter 774,
 5 Oregon Laws 2013 (alternative fuel vehicle contributions), section 2, chapter 34, Oregon Laws 2022
 6 (small forest option), and section 8, chapter 115, Oregon Laws 2022 (agricultural overtime pay), **and**
 7 **section 3 of this 2023 Act (affordable housing).**

8 **SECTION 9.** ORS 318.031, as amended by section 12, chapter 34, Oregon Laws 2022, and section
 9 16, chapter 115, Oregon Laws 2022, is amended to read:

10 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter
 11 317 shall be administered as uniformly as possible (allowance being made for the difference in im-
 12 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-
 13 corporated into and made a part of this chapter: ORS 315.104, 315.141, 315.156, 315.176, 315.204,
 14 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506, 315.507, 315.523, 315.533, 315.593 and
 15 315.643 and section 2, chapter 34, Oregon Laws 2022, and section 8, chapter 115, Oregon Laws 2022,
 16 **and section 3 of this 2023 Act** (all only to the extent applicable to a corporation) and ORS chapter
 17 317.

18 **SECTION 10.** **Sections 2 to 7 of this 2023 Act apply to tax years beginning on or after**
 19 **January 1, 2024, and before January 1, 2039.**

20 **SECTION 11.** **This 2023 Act takes effect on the 91st day after the date on which the 2023**
 21 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

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