

A-Engrossed
Senate Bill 878

Ordered by the Senate June 11
Including Senate Amendments dated June 11

Sponsored by COMMITTEE ON FINANCE AND REVENUE (at the request of Advantage Capital Partners, Oregon Coalition for Capital)

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.

Creates Oregon New Markets Development Program. Creates tax credit for qualified equity investments in low-income community businesses.

Applies to qualified equity investments made on or after January 1, 2010.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tax credits for investments in low-income communities; creating new provisions; amend-
3 ing ORS 314.752 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 8 of this 2009 Act shall be known as and may be cited as the**
6 **“Oregon New Markets Development Program.”**

7 **SECTION 2. As used in sections 2 to 8 of this 2009 Act:**

8 (1) **“Credit allowance date” means, with respect to any qualified equity investment:**

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

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

11 (2) **“Long-term debt security” means any debt instrument issued by a qualified commu-**
12 **nity development entity, at par value or at a premium, with an original maturity date of at**
13 **least seven years from the date of its issuance, with no acceleration of repayment, amorti-**
14 **zation or prepayment features prior to its original maturity date.**

15 (3) **“Purchase price” means the amount of cash paid to a qualified community develop-**
16 **ment entity for a qualified equity investment.**

17 (4) **“Qualified active low-income community business” has the meaning given that term**
18 **in section 45D of the Internal Revenue Code.**

19 (5) **“Qualified community development entity” has the meaning given that term in section**
20 **45D of the Internal Revenue Code, provided that the entity has entered into, or is controlled**
21 **by an entity that has entered into, an allocation agreement with the Community Develop-**
22 **ment Financial Institutions Fund of the United States Department of the Treasury with re-**
23 **spect to credits authorized by section 45D of the Internal Revenue Code, and the State of**
24 **Oregon is included within the service area set forth in the allocation agreement.**

25 (6) **“Qualified equity investment” means any equity investment in, or long-term debt se-**
26 **curity issued by, a qualified community development entity, that:**

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 (a) Is acquired at its original issuance solely in exchange for cash after the operative date
2 of this section, unless it was a qualified equity investment in the hands of a prior holder; and

3 (b) Has at least 85 percent of its cash purchase price used by the issuer to make qualified
4 low-income community investments in qualified active low-income community businesses lo-
5 cated in the state.

6 (7) "Qualified low-income community investment" means any capital or equity invest-
7 ment in, or loan to, any qualified active low-income community business made after the op-
8 erative date of this section.

9 **SECTION 3.** Section 4 of this 2009 Act is added to and made a part of ORS chapter 315.

10 **SECTION 4.** (1) As used in this section, "applicable percentage" means zero percent for
11 each of the first two credit allowance dates, seven percent for the third credit allowance date
12 and eight percent for the next four credit allowance dates.

13 (2) A credit against the taxes otherwise due under ORS chapter 316 or, if the taxpayer
14 is a corporation, under ORS chapter 317 or 318 is allowed to a taxpayer that makes a quali-
15 fied equity investment.

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

18 (b) The taxpayer that holds a qualified equity investment on a particular credit allowance
19 date of the qualified equity investment, whether the original purchaser or subsequent holder
20 of the qualified equity investment, may claim a portion of the tax credit against its tax li-
21 ability for the tax year that includes the credit allowance date equal to the applicable per-
22 centage for that credit allowance date multiplied by the purchase price of the qualified equity
23 investment.

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

26 (5) Any tax credit otherwise allowable under this section that is not used by the taxpayer
27 in a particular tax year may be carried forward and offset against the taxpayer's tax liability
28 in any succeeding tax year.

29 (6) The following conditions must exist for a taxpayer to be eligible for the credit allowed
30 under this section:

31 (a) A qualified community development entity that issues a debt instrument may not
32 make cash interest payments on the debt instrument during the period commencing with its
33 issuance and ending on its final credit allowance date in excess of the sum of the cash in-
34 terest payments and the cumulative operating income, as defined in the regulations
35 promulgated under section 45D of the Internal Revenue Code, of the qualified community
36 development entity for the same period. This paragraph shall in no way limit the holder's
37 ability to accelerate payments on the debt instrument in situations where the qualified
38 community development entity has defaulted on covenants designed to ensure compliance
39 with this section or section 45D of the Internal Revenue Code.

40 (b) For the duration of a qualified community development entity's investment in, or loan
41 to, a qualified active low-income community business, it must be reasonable to expect that
42 at the time of the investment or loan, the business will continue to satisfy the requirements
43 for being a qualified active low-income community business throughout the entire period of
44 the investment or loan.

45 (c) A qualified equity investment must be designated by the issuer as a qualified equity

1 investment and be certified by the Economic and Community Development Department as
2 not exceeding the limitation contained in section 7 of this 2009 Act. The qualified community
3 development entity must keep sufficiently detailed books and records with respect to the
4 investments made with the proceeds of the qualified equity investments to allow the direct
5 tracing of proceeds into qualified low-income community investments in qualified active
6 low-income community businesses in this state.

7 (d) The qualified community development entity shall report annually to the department
8 the following information:

9 (A) The number of employment positions created as a result of qualified low-income
10 community investments by the qualified community development entity;

11 (B) The average annual salary of positions described in subparagraph (A) of this para-
12 graph; and

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

15 (e) The maximum amount of qualified low-income community investments that may be
16 made in a qualified active low-income community business and all of its affiliates, with the
17 proceeds of qualified equity investments that have been certified under section 7 of this 2009
18 Act, shall be \$10 million, whether made by one or several qualified community development
19 entities.

20 **SECTION 5.** A tax credit allowed under section 4 of this 2009 Act may not be sold or
21 transferred. Tax credits that a partnership, limited liability company, S corporation or other
22 pass-through entity is entitled to claim may be allocated to the partners, members or
23 shareholders of the entity for their direct use in accordance with the provisions of any
24 agreement among the partners, members or shareholders.

25 **SECTION 6.** (1) A taxpayer that is a qualified community development entity that seeks
26 to have an equity investment or long-term debt security certified as a qualified equity in-
27 vestment and eligible for a tax credit under section 4 of this 2009 Act shall apply to the
28 Economic and Community Development Department. The department shall establish by rule
29 application procedures for applications for certification. The taxpayer must submit an appli-
30 cation on a form that the department provides that includes:

31 (a) The taxpayer's name, address, tax identification number and evidence of its certif-
32 ication as a qualified community development entity.

33 (b) A copy of an allocation agreement executed by the entity, or its controlling entity,
34 and the Community Development Financial Institutions Fund, which includes the State of
35 Oregon in its service area.

36 (c) A certificate executed by an executive officer of the entity attesting that the allo-
37 cation agreement remains in effect and has not been revoked or canceled by the Community
38 Development Financial Institutions Fund.

39 (d) A description of the proposed purchase price, structure and purchaser of the equity
40 investment or long-term debt security.

41 (e) The name and tax identification number of any person eligible to claim a tax credit,
42 under section 4 of this 2009 Act, allowed as a result of the certification of the qualified equity
43 investment.

44 (f) Information regarding the proposed use of proceeds from the issuance of the qualified
45 equity investment.

1 **(g) A nonrefundable application fee of \$5,000. This fee shall be paid to the department and**
2 **shall be required of each application submitted.**

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

14 **(3) If the application is deemed complete, the department shall certify the proposed eq-**
15 **uity investment or long-term debt security as a qualified equity investment and eligible for**
16 **tax credits under section 4 of this 2009 Act, subject to the limitations contained in section 5**
17 **of this 2009 Act. The department shall provide written notice of the certification to the**
18 **qualified community development entity. The notice shall include the names of those tax-**
19 **payers who are eligible to utilize the credits and their respective credit amounts. If the**
20 **names of the persons or entities that are eligible to utilize the credits change due to a**
21 **transfer of a qualified equity investment or a change in an allocation pursuant to section 5**
22 **of this 2009 Act, the qualified community development entity shall notify the department of**
23 **the change.**

24 **(4) Within 60 days after receiving notice of certification, the qualified community devel-**
25 **opment entity shall issue the qualified equity investment and receive cash in the amount of**
26 **the certified purchase price. The qualified community development entity must provide the**
27 **department with evidence of the receipt of the cash investment within 10 business days after**
28 **receipt. If the qualified community development entity does not receive the cash investment**
29 **and issue the qualified equity investment within 30 days following receipt of the certification**
30 **notice, the certification shall lapse and the entity may not issue the qualified equity invest-**
31 **ment without reapplying to the department for certification. A certification that lapses re-**
32 **verts back to the department and may be reissued only in accordance with the application**
33 **process outlined in this section.**

34 **(5) The department shall certify qualified equity investments in the order applications are**
35 **received by the department. Applications received on the same day shall be deemed to have**
36 **been received simultaneously. For applications received on the same day and deemed com-**
37 **plete, the department shall certify, consistent with remaining tax credit capacity, qualified**
38 **equity investments in proportionate percentages based upon the ratio of the amount of**
39 **qualified equity investment requested in an application to the total amount of qualified equity**
40 **investments requested in all applications received on the same day. If a pending request**
41 **cannot be fully certified because of the limitations of section 7 of this 2009 Act, the depart-**
42 **ment shall certify the portion that may be certified unless the qualified community develop-**
43 **ment entity elects to withdraw its request rather than receive partial credit.**

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

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

3 **SECTION 7.** (1) Once the Economic and Community Development Department has certi-
4 fied a cumulative amount of qualified equity investments that can result in the utilization
5 of \$78 million of tax credits in any tax year, the department may not certify any more qual-
6 ified equity investments under section 6 of this 2009 Act. This limitation shall be based on
7 the scheduled utilization of tax credits without regard to the potential for taxpayers to carry
8 forward tax credits to later tax years.

9 (2) The department shall reserve 15 percent of the total amount of qualified equity in-
10 vestments that receive certification under section 6 of this 2009 Act for investments in
11 businesses that:

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

14 (b) Produce goods that directly reduce emissions of greenhouse gases or are designed as
15 environmentally sensitive replacements for products in current use.

16 (3) The department shall establish by rule procedures and criteria for implementing the
17 provisions of this section.

18 **SECTION 8.** (1) The Department of Revenue may recapture any portion of a tax credit
19 allowed under section 4 of this 2009 Act if:

20 (a) Any amount of federal tax credit that might be available with respect to the qualified
21 equity investment that generated the tax credit under section 4 of this 2009 Act is recaptured
22 under section 45D of the Internal Revenue Code. The department's recapture shall be
23 proportionate to the federal recapture with respect to the qualified equity investment.

24 (b) The qualified community development entity redeems or makes a principal repayment
25 with respect to the qualified equity investment that generated the tax credit prior to the
26 final credit allowance date of the qualified equity investment. The department's recapture
27 shall be proportionate to the amount of the redemption or repayment with respect to the
28 qualified equity investment.

29 (c) The qualified community development entity fails to invest at least 85 percent of the
30 purchase price of the qualified equity investment in qualified low-income community invest-
31 ments within 12 months of the issuance of the qualified equity investment and maintain the
32 same level of investment in qualified low-income community investments until the last credit
33 allowance date for the qualified equity investment. For purposes of calculating the amount
34 of qualified low-income community investments held by a qualified community development
35 entity, an investment shall be considered held by the entity even if the investment has been
36 sold or repaid provided that the entity reinvests an amount equal to the capital returned to
37 or recovered from the original investment, exclusive of any profits realized, in another
38 qualified active low-income community business in this state within 12 months of the receipt
39 of the capital. A qualified community development entity shall not be required to reinvest
40 capital returned from qualified low-income community investments after the sixth anniver-
41 sary of the issuance of the qualified equity investment, the proceeds of which were used to
42 make the qualified low-income community investment, and the qualified low-income com-
43 munity investment shall be considered held by the issuer through the qualified equity in-
44 vestment's final credit allowance date.

45 (2) The department shall provide notice to the qualified community development entity

1 of any proposed recapture of tax credits pursuant to this section. The entity shall have 90
 2 days to cure any deficiency indicated in the department's original recapture notice and avoid
 3 the recapture. If the entity fails or is unable to cure the deficiency within the 90-day period,
 4 the department shall provide the entity and the taxpayer from whom the credit is to be re-
 5 captured with a final order of recapture. Any tax credit for which a final recapture order
 6 has been issued shall be recaptured by the department from the taxpayer who claimed the
 7 tax credit on a tax return.

8 **SECTION 9.** ORS 314.752 is amended to read:

9 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
 10 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
 11 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
 12 allowable to the shareholders of the S corporation.

13 (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on
 14 income of the shareholder of an S corporation, there shall be taken into account the shareholder's
 15 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but
 16 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-
 17 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the
 18 manner prescribed under section 1377(a) of the Internal Revenue Code.

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

22 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
 23 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
 24 316.117, then that provision shall apply to the nonresident shareholder.

25 (5) As used in this section, "business tax credit" means a tax credit granted to personal income
 26 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive
 27 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-
 28 section as a business tax credit or is designated as a business tax credit by law or by the Depart-
 29 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309
 30 (tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS
 31 315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-pass devices, fishways), ORS
 32 315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care
 33 assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS
 34 315.254 (youth apprenticeship sponsorship), ORS 315.304 (pollution control facility), ORS 315.324
 35 (plastics recycling), ORS 315.354 and ORS 469.207 (energy conservation facilities), ORS 315.507
 36 (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone
 37 marrow transplant expenses), ORS 317.115 (fueling stations necessary to operate an alternative fuel
 38 vehicle) and ORS 315.141 (biomass production for biofuel) **and section 4 of this 2009 Act (new
 39 markets tax credit).**

40 **SECTION 10.** ORS 318.031 is amended to read:

41 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter
 42 317 shall be administered as uniformly as possible (allowance being made for the difference in im-
 43 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-
 44 corporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.134, 315.141, 315.156,
 45 315.204, 315.208, 315.213, 315.254, 315.304, 315.507, 315.511 and 315.604 **and section 4 of this 2009**

1 **Act** (all only to the extent applicable to a corporation) and ORS chapter 317.

2 **SECTION 11.** Sections 2 to 8 of this 2009 Act and the amendments to ORS 314.752 and
3 318.031 by sections 9 and 10 of this 2009 Act apply to qualified equity investments made on
4 or after January 1, 2010.

5 **SECTION 12.** This 2009 Act takes effect on the 91st day after the date on which the
6 regular session of the Seventy-fifth Legislative Assembly adjourns sine die.

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