House Bill 2155

Introduced and printed pursuant to House Rule 12.00. Presession filed (at the request of House Special Committee on Small Business Growth)

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.**

Extends sunset for tax credit for qualified equity investment. Increases maximum amount of qualified equity investments that Oregon Business Development Department may certify per tax year. Provides, for bioscience incubator, higher limitations on amount of qualified low-income community investments that may be made with proceeds of qualified equity investments that are certified for tax credit.

Applies to qualified equity investments made on or after January 1, 2018, and before July 1, 2022.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to qualified equity investment tax credits; creating new provisions; amending ORS 285C.653, 315.529 and 315.533; and prescribing an effective date.

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

SECTION 1. ORS 285C.653 is amended to read:

285C.653. (1) Once the Oregon Business Development Department has certified a cumulative amount of qualified equity investments that can result in the utilization of [*$16 million*] **$24 million** of tax credits in any tax year, the department may not certify any more qualified equity investments under ORS 285C.650. This limitation**:**

(a) Shall be based on the scheduled utilization of tax credits without regard to the potential for taxpayers to carry forward tax credits to later tax years.

(b) Does not apply to a bioscience incubator.

(2) The department shall reserve 15 percent of the total amount of qualified equity investments that receive certification under ORS 285C.650 for investments in qualified active low-income community businesses that:

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

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

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

SECTION 2. ORS 315.529 is amended to read:

315.529. As used in ORS 285C.650, 285C.653, 285C.656 and 315.529 to 315.536:

(1) "Bioscience incubator" means a nonprofit venture, along with the facility in which it is housed, that has the primary purpose of fostering the development of university-directed medical or scientific research into commercial ventures. The facility that houses the nonprofit venture shall be used for laboratories and offices and contain at least 10,000 square

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.

feet of floor space.

[*(1)*] **(2)** "Credit allowance date" means, with respect to any qualified equity investment:

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

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

[*(2)*] **(3)** "Long-term debt security" means any debt instrument issued by a qualified community development entity, at par value or at a premium, with an original maturity date of at least seven years from the date of its issuance, with no acceleration of repayment, amortization or prepayment features prior to its original maturity date.

[*(3)*] **(4)** "Purchase price" means the amount of cash paid to a qualified community development entity for a qualified equity investment.

[*(4)*] **(5)** "Qualified active low-income community business" has the meaning given that term in section 45D of the Internal Revenue Code. "Qualified active low-income community business" does not include a business**, other than a bioscience incubator,** that derives or projects to derive 15 percent or more of its annual revenue from the rental or sale of real estate, unless the business is controlled by, or under common control with, another business that:

(a) Does not derive or project to derive 15 percent or more of its annual gross revenues from the rental or sale of real estate; and

(b) Is the primary tenant of real estate leased from the controlled business.

[*(5)*] **(6)** "Qualified community development entity" has the meaning given that term in section 45D of the Internal Revenue Code, provided that the entity has entered into, or is controlled by an entity that has entered into, an allocation agreement with the Community Development Financial Institutions Fund of the United States Department of the Treasury with respect to credits authorized by section 45D of the Internal Revenue Code, and the State of Oregon is included within the service area set forth in the allocation agreement.

[*(6)*] **(7)** "Qualified equity investment" means any equity investment in, or long-term debt security issued by, a qualified community development entity, that:

(a) Is acquired at its original issuance solely in exchange for cash after July 1, 2012, unless it was a qualified equity investment in the hands of a prior holder; and

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

[*(7)*] **(8)** "Qualified low-income community investment" means any capital or equity investment in, or loan to, any qualified active low-income community business made after July 1, 2012.

SECTION 3. ORS 315.533 is amended to read:

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

(2) A person that makes a qualified equity investment shall, at the time of investment, earn a vested credit against the taxes otherwise due under ORS chapter 316 or, if the person is a corporation, under ORS chapter 317 or 318.

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

(b) The taxpayer that holds a qualified equity investment on a particular credit allowance date of the qualified equity investment may claim a portion of the tax credit against its tax liability for the tax year that includes the credit allowance date equal to the applicable percentage for that credit allowance date multiplied by the purchase price of the qualified equity investment.

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

(5) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year. Any credit remaining unused in the second succeeding tax year may be carried forward and used in the third succeeding tax year. Any credit remaining unused in the third succeeding tax year may be carried forward and used in the fourth succeeding tax year. Any credit remaining unused in the fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be used in any tax year thereafter.

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

(a) A qualified community development entity that issues a debt instrument may not make cash interest payments on the debt instrument during the period commencing with its issuance and ending on its final credit allowance date in excess of the sum of the cash interest payments and the cumulative operating income, as defined in the regulations promulgated under section 45D of the Internal Revenue Code, of the qualified community development entity for the same period. Neither this paragraph nor the definition of "long-term debt security" provided in ORS 315.529 in any way limits the holder's ability to accelerate payments on the debt instrument in situations where the qualified community development entity has defaulted on covenants designed to ensure compliance with this section or section 45D of the Internal Revenue Code.

(b) A business shall be considered a qualified active low-income community business for the duration of a qualified community development entity's investment in or loan to the business, if it is reasonable to expect that at the time of the qualified community development entity's investment in or loan to a qualified active low-income community business, the business will continue to satisfy the requirements for being a qualified active low-income community business throughout the entire period of the investment or loan.

(c) A qualified equity investment must be designated by the issuer as a qualified equity investment and be certified by the Oregon Business Development Department as not exceeding the limitation in ORS 285C.653. The qualified community development entity must keep sufficiently detailed books and records with respect to the investments made with the proceeds of the qualified equity investments to allow the direct tracing of proceeds into qualified low-income community investments in qualified active low-income community businesses in this state.

(d) The qualified community development entity shall report annually to the department:

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

(B) The average annual salary of positions described in subparagraph (A) of this paragraph; and

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

(e) The maximum amount of qualified low-income community investments that may be made in a qualified active low-income community business and all of its affiliates, with the proceeds of qualified equity investments that have been certified under ORS 285C.650, [*shall be $8 million,*] whether made by one or several qualified community development entities**, shall be:**

(A) $8 million, if the qualified active low-income community business is not a bioscience

incubator; or

(B) $40 million, if invested in a bioscience incubator.

(f) A qualified equity investment must be made before July 1, [*2016*] **2022**. Nothing in this paragraph precludes an entity that makes a qualified equity investment prior to July 1, [*2016*] **2022**, from claiming a tax credit relating to that qualified equity investment for each applicable credit allowance date.

(7) A taxpayer claiming a credit under this section may not claim any other credit under this chapter or ORS chapter 285C during the same tax year based on activities related to the same qualified active low-income community business.

SECTION 4. The amendments to ORS 285C.653, 315.529 and 315.533 by sections 1 to 3 of this 2017 Act apply to qualified equity investments made on or after January 1, 2018, and before July 1, 2022.

SECTION 5. This 2017 Act takes effect on the 91st day after the date on which the 2017 regular session of the Seventy-ninth Legislative Assembly adjourns sine die.