

HB 2155-2  
(LC 2628)  
4/3/17 (CMT/ps)

Requested by HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT AND TRADE

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2155**

1 On page 1 of the printed bill, line 2, after the first semicolon delete the  
2 rest of the line and delete line 3 and insert “amending ORS 285C.650,  
3 285C.653, 315.529 and 315.533 and section 11, chapter 732, Oregon Laws 2011;  
4 and prescribing an effective date.”.

5 Delete lines 5 through 27 and delete pages 2 through 4 and insert:

6 **“SECTION 1.** ORS 285C.650 is amended to read:

7 “285C.650. (1) A qualified community development entity that seeks to  
8 have an equity investment or long-term debt security certified as a qualified  
9 equity investment and eligible for a tax credit under ORS 315.533 shall apply  
10 to the Oregon Business Development Department. The department shall es-  
11 tablish by rule application procedures for applications for certification. The  
12 entity must submit an application on a form that the department provides  
13 that includes:

14 “(a) The entity’s name, address, tax identification number and evidence  
15 of the entity’s certification as a qualified community development entity.

16 “(b) A copy of an allocation agreement executed by the entity, or its  
17 controlling entity, and the Community Development Financial Institutions  
18 Fund that includes the State of Oregon in its service area.

19 “(c) A certificate executed by an executive officer of the entity attesting  
20 that the allocation agreement remains in effect and has not been revoked or  
21 canceled by the Community Development Financial Institutions Fund.

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

3       “(e) The name and tax identification number of any person eligible to  
4 claim a tax credit, under ORS 315.533, allowed as a result of the certification  
5 of the qualified equity investment.

6       “(f) Information regarding the proposed use of proceeds from the issuance  
7 of the qualified equity investment.

8       “(g) A nonrefundable application fee of \$20,000. This fee shall be paid to  
9 the department and shall be required for each application submitted.

10       “(2) Within 15 days after receipt of a completed application containing the  
11 information necessary for the department to certify a proposed equity in-  
12 vestment, including the payment of the application fee, the department shall  
13 grant or deny the application in full or in part. If the department denies any  
14 part of the application, the department shall inform the qualified community  
15 development entity of the grounds for the denial. If the qualified community  
16 development entity provides any additional information required by the de-  
17 partment or otherwise completes its application within 15 days after the no-  
18 tice of denial, the application shall be considered completed as of the  
19 original date of submission. If the qualified community development entity  
20 fails to provide the information or complete its application within the 15-day  
21 period, the application remains denied and must be resubmitted in full with  
22 a new submission date.

23       “(3) If the application is deemed complete, the department shall certify the  
24 proposed equity investment or long-term debt security as a qualified equity  
25 investment and eligible for a tax credit under ORS 315.533, subject to the  
26 limitations in ORS 315.536. The department shall provide written notice of  
27 the certification to the qualified community development entity. The notice  
28 shall include the names of those taxpayers who are eligible to utilize the  
29 credits and their respective credit amounts. If the names of the persons or  
30 entities that are eligible to utilize the credits change due to a transfer of a

1 qualified equity investment or a change in an allocation pursuant to ORS  
2 315.536, the qualified community development entity shall notify the depart-  
3 ment of the change.

4 “(4)(a) Except as provided in paragraph (b) of this subsection, within 60  
5 days after receiving notice of certification, a qualified community develop-  
6 ment entity shall issue the qualified equity investment and receive cash in  
7 the amount of the certified purchase price. The qualified community devel-  
8 opment entity must provide the department with evidence of the receipt of  
9 the cash investment within 10 business days after receipt.

10 “(b) For a qualified equity investment described in ORS 285C.653 (2), a  
11 qualified community development entity shall issue the qualified equity in-  
12 vestment during the period beginning July 1, 2012, and ending 60 days after  
13 receiving notice of certification. If the qualified equity investment is issued  
14 prior to the submission of an application for certification under this section,  
15 the qualified community development entity must provide the department  
16 with evidence of the qualified equity investment and of receipt of the cash  
17 investment at the time of application for certification.

18 “(c) If a qualified community development entity does not receive the cash  
19 investment and issue the qualified equity investment on or before the 60th  
20 day following receipt of the certification notice, the certification shall lapse  
21 and the entity may not issue the qualified equity investment without reap-  
22 plying to the department for certification. A certification that lapses reverts  
23 to the department and may be reissued only in accordance with the applica-  
24 tion process outlined in this section.

25 “(5) The department shall certify qualified equity investments in the order  
26 applications are received by the department. Applications received on the  
27 same day shall be deemed to have been received simultaneously. For appli-  
28 cations received on the same day and deemed complete, the department shall  
29 certify, consistent with remaining tax credit capacity, qualified equity in-  
30 vestments in proportionate percentages based upon the ratio of the amount

1 of qualified equity investment requested in an application to the total  
2 amount of qualified equity investments requested in all applications received  
3 on the same day. If a pending request cannot be fully certified because of the  
4 limitation in ORS 285C.653, the department shall certify the portion that may  
5 be certified unless the qualified community development entity elects to  
6 withdraw its request rather than receive partial credit.

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

9 “(7) **Any fees paid to a qualified community development entity in**  
10 **connection with a qualified equity investment may not exceed three**  
11 **percent of the qualified equity investment.**

12 “[7] (8) The department shall establish by rule procedures to administer  
13 the provisions of this section, including the allocation of tax credits issued  
14 for qualified equity investments.

15 “**SECTION 2.** ORS 285C.653 is amended to read:

16 “285C.653. (1) Once the Oregon Business Development Department has  
17 certified a cumulative amount of qualified equity investments that can result  
18 in the utilization of [~~\$16~~] **\$24** million of tax credits in any tax year, the de-  
19 partment may not certify any more qualified equity investments under ORS  
20 285C.650. This limitation shall be based on the scheduled utilization of tax  
21 credits without regard to the potential for taxpayers to carry forward tax  
22 credits to later tax years.

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

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

28 “(b) Produce goods that directly reduce emissions of greenhouse gases or  
29 are designed as environmentally sensitive replacements for products in cur-  
30 rent use.

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

3 **“SECTION 3.** ORS 315.529 is amended to read:

4 “315.529. As used in ORS 285C.650, 285C.653, 285C.656 and 315.529 to  
5 315.536:

6 “(1) ‘Credit allowance date’ means, with respect to any qualified equity  
7 investment:

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

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

10 “(2) ‘Long-term debt security’ means any debt instrument issued by a  
11 qualified community development entity, at par value or at a premium, with  
12 an original maturity date of at least seven years from the date of its issu-  
13 ance, with no acceleration of repayment, amortization or prepayment fea-  
14 tures prior to its original maturity date.

15 “(3) ‘Purchase price’ means the amount of cash paid to a qualified com-  
16 munity development entity for a qualified equity investment.

17 “(4)(a) ‘Qualified active low-income community business’ has the meaning  
18 given that term in section 45D of the Internal Revenue Code. ‘Qualified ac-  
19 tive low-income community business’ does not include a business that derives  
20 or projects to derive 15 percent or more of its annual revenue from the rental  
21 or sale of real estate, unless the business is controlled by, or under common  
22 control with, another business that:

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

25 “[b] (B) Is the primary tenant of real estate leased from the controlled  
26 business.

27 **“(b) For purposes of this subsection, the calculation of annual gross**  
28 **revenues from the rental or sale of real estate does not include**  
29 **amounts of residential rental income derived from dwelling units that**  
30 **are constructed with the intention that they be occupied:**

1       “(A) By individuals or families whose household income is no more  
2 than 80 percent of the greater of the statewide median family income  
3 or the median family income for the metropolitan area in which the  
4 dwelling units are located; and

5       “(B) At rents that are affordable, as determined by the Secretary  
6 of Housing and Urban Development of the United States.

7       “(5) ‘Qualified community development entity’ has the meaning given that  
8 term in section 45D of the Internal Revenue Code, provided that the entity  
9 has entered into, or is controlled by an entity that has entered into, an al-  
10 location agreement with the Community Development Financial Institutions  
11 Fund of the United States Department of the Treasury with respect to credits  
12 authorized by section 45D of the Internal Revenue Code, and the State of  
13 Oregon is included within the service area set forth in the allocation agree-  
14 ment.

15       “(6) ‘Qualified equity investment’ means any equity investment in, or  
16 long-term debt security issued by, a qualified community development entity,  
17 that:

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

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

24       “(7) ‘Qualified low-income community investment’ means any capital or  
25 equity investment in, or loan to, any qualified active low-income community  
26 business made after July 1, 2012.

27       “**SECTION 4.** ORS 315.533 is amended to read:

28       “315.533. (1) As used in this section, ‘applicable percentage’ means zero  
29 percent for each of the first two credit allowance dates, seven percent for the  
30 third credit allowance date and eight percent for the next four credit allow-

1    ance dates.

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

6       “(3)(a) The total amount of the tax credit available to a taxpayer under  
7 this section shall equal 39 percent of the purchase price of the qualified eq-  
8 uity investment.

9       “(b) The taxpayer that holds a qualified equity investment on a particular  
10 credit allowance date of the qualified equity investment may claim a portion  
11 of the tax credit against its tax liability for the tax year that includes the  
12 credit allowance date equal to the applicable percentage for that credit al-  
13 lowance date multiplied by the purchase price of the qualified equity in-  
14 vestment.

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

17       “(5) Any tax credit otherwise allowable under this section that is not used  
18 by the taxpayer in a particular tax year may be carried forward and offset  
19 against the taxpayer’s tax liability for the next succeeding tax year. Any  
20 credit remaining unused in the next succeeding tax year may be carried  
21 forward and used in the second succeeding tax year. Any credit remaining  
22 unused in the second succeeding tax year may be carried forward and used  
23 in the third succeeding tax year. Any credit remaining unused in the third  
24 succeeding tax year may be carried forward and used in the fourth succeed-  
25 ing tax year. Any credit remaining unused in the fourth succeeding tax year  
26 may be carried forward and used in the fifth succeeding tax year, but may  
27 not be used in any tax year thereafter.

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

30       “(a) A qualified community development entity that issues a debt instru-

1 ment may not make cash interest payments on the debt instrument during  
2 the period commencing with its issuance and ending on its final credit al-  
3 lowance date in excess of the sum of the cash interest payments and the  
4 cumulative operating income, as defined in the regulations promulgated un-  
5 der section 45D of the Internal Revenue Code, of the qualified community  
6 development entity for the same period. Neither this paragraph nor the de-  
7 finition of ‘long-term debt security’ provided in ORS 315.529 in any way  
8 limits the holder’s ability to accelerate payments on the debt instrument in  
9 situations where the qualified community development entity has defaulted  
10 on covenants designed to ensure compliance with this section or section 45D  
11 of the Internal Revenue Code.

12 “(b) A business shall be considered a qualified active low-income commu-  
13 nity business for the duration of a qualified community development entity’s  
14 investment in or loan to the business, if it is reasonable to expect that at  
15 the time of the qualified community development entity’s investment in or  
16 loan to a qualified active low-income community business, the business will  
17 continue to satisfy the requirements for being a qualified active low-income  
18 community business throughout the entire period of the investment or loan.

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

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

29 “(A) The number of employment positions created and retained as a result  
30 of qualified low-income community investments by the qualified community



1 development entity;

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

4 “(C) The number of positions described in subparagraph (A) of this para-  
5 graph that provide health benefits.

6 “(e) The maximum amount of qualified low-income community investments  
7 that may be made in a qualified active low-income community business and  
8 all of its affiliates, with the proceeds of qualified equity investments that  
9 have been certified under ORS 285C.650, shall be [~~\$8~~] **\$10** million, whether  
10 made by one or several qualified community development entities.

11 “(f) A qualified equity investment must be made before [~~July 1, 2016~~]  
12 **January 1, 2023**. Nothing in this paragraph precludes an entity that makes  
13 a qualified equity investment prior to [~~July 1, 2016~~] **January 1, 2023**, from  
14 claiming a tax credit relating to that qualified equity investment for each  
15 applicable credit allowance date.

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

20 “**SECTION 5.** Section 11, chapter 732, Oregon Laws 2011, is amended to  
21 read:

22 “**Sec. 11. (1)** [*Sections 2 to 8 of this 2011 Act*] **315.529 to 315.536, 285C.650,**  
23 **285C.653, 285C.656** and the amendments to ORS 314.752 and 318.031 by  
24 sections 9 and 10 [*of this 2011 Act*], **chapter 732, Oregon Laws 2011**, apply  
25 to qualified equity investments made on or after July 1, 2012.

26 “**(2) The amendments to ORS 285C.650, 285C.653, 315.529 and 315.533**  
27 **by sections 1 to 4 of this 2017 Act apply to tax years beginning on or**  
28 **after January 1, 2018, and to qualified equity investments made in tax**  
29 **years beginning on or after January 1, 2018.**

30 “**SECTION 6.** **This 2017 Act takes effect on the 91st day after the**

1 **date on which the 2017 regular session of the Seventy-ninth Legislative**  
2 **Assembly adjourns sine die.”**

3 \_\_\_\_\_