

# House Bill 2550

Sponsored by Representative RESCHKE (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**.

Creates income and corporate excise tax credits for investments in facilities used for manufacturing, siting of headquarters or research. Enhances credit amount for facility that provides environmental benefit.

Applies to tax years beginning on or after January 1, 2024, and before January 1, 2030.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to tax credits for business facilities; creating new provisions; amending ORS 314.772 and  
3 318.031; and prescribing an effective date.

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

5 **SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 315.**

6 **SECTION 2. (1) A credit is allowed against the taxes otherwise due under ORS chapter  
7 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318, for expanding or lo-  
8 cating a qualified facility that is certified under sections 4 to 12 of this 2023 Act.**

9 **(2) Except as provided in subsection (3) of this section, the amount of the credit allowed  
10 shall be the least of:**

11 **(a) Ten percent of the amount the taxpayer has made in total qualifying investment in  
12 the qualified facility;**

13 **(b) \$20,000 for each net new full-time employment position filled by the taxpayer that has  
14 job duties associated with a qualified facility; or**

15 **(c) \$30 million, if the qualifying investment made in the first 12 months after preliminary  
16 certification under section 7 of this 2023 Act exceeds \$250,000.**

17 **(3) If the qualifying investment is a qualified environmental investment, the amount of  
18 the credit allowed shall be the lesser of:**

19 **(a) Twenty percent of the amount the taxpayer has made in total qualifying investment  
20 in the qualified facility;**

21 **(b) \$25,000 for each net new full-time employment position filled by the taxpayer that has  
22 job duties associated with a qualified facility; or**

23 **(c) \$50 million, if the qualifying investment made in the first 12 months after preliminary  
24 certification under section 7 of this 2023 Act exceeds \$250,000.**

25 **(4) Only capital investments in a qualified facility that are made not more than 36 months  
26 prior to the submission by the taxpayer of an application for preliminary certification are  
27 included in the computation of the credit.**

28 **(5) The credit shall be claimed over five consecutive tax years, with the amount allowed  
29 in each of the five tax years not exceeding the lesser of 20 percent of the total or the tax  
30 liability of the taxpayer.**

**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 (6) In order for a tax credit to be allowable under this section:

2 (a) The qualified facility must be located in Oregon.

3 (b) At least 51 percent of the net new full-time employment positions with job duties as-  
 4 sociated with the qualified facility must pay a wage that equals or exceeds 125 percent, or  
 5 100 percent in the case of a qualified facility in a rural area, of the median annual wage for  
 6 production occupations in this state.

7 (c) All net new full-time employment positions must include health insurance coverage  
 8 for the employees for which the taxpayer pays at least 65 percent of the premium or mem-  
 9 bership cost.

10 (d) The qualified facility must have received final certification from the Director of the  
 11 Oregon Business Development Department under sections 4 to 12 of this 2023 Act.

12 (7) The Department of Revenue may require that the Oregon Business Development De-  
 13 partment provide information about the final certification issued under section 8 of this 2023  
 14 Act, if required by the Department of Revenue as provided in ORS 315.058.

15 (8) Each taxpayer shall maintain a record of the written certification of the amount of  
 16 the tax credit under this section for a period of at least five years after the tax year in which  
 17 the credit is claimed and provide the written certification to the Department of Revenue  
 18 upon request.

19 (9) The credit shall be claimed on a form prescribed by the Department of Revenue that  
 20 contains the information required by the department.

21 (10) Any tax credit otherwise allowable under this section that is not used by the tax-  
 22 payer in a particular tax year may be carried forward and offset against the taxpayer's tax  
 23 liability for the next succeeding tax year. Any credit remaining unused in the next succeed-  
 24 ing tax year may be carried forward and used in the second succeeding tax year, and likewise  
 25 any credit not used in that second succeeding tax year may be carried forward and used in  
 26 the third succeeding tax year, and any credit not used in that third succeeding tax year may  
 27 be carried forward and used in the fourth succeeding tax year, but may not be carried for-  
 28 ward for any tax year thereafter.

29 (11) In the case of a credit allowed under this section:

30 (a) A nonresident shall be allowed the credit under this section in the proportion provided  
 31 in ORS 316.117.

32 (b) If a change in the status of the taxpayer from resident to nonresident or from non-  
 33 resident to resident occurs, the credit allowed by this section shall be determined in a man-  
 34 ner consistent with ORS 316.117.

35 (c) If a change in the tax year of the taxpayer occurs as described in ORS 314.085, or if  
 36 the department terminates the taxpayer's tax year under ORS 314.440, the credit allowed  
 37 under this section shall be prorated or computed in a manner consistent with ORS 314.085.

38 (12) A person that has earned a tax credit under this section may transfer the credit to  
 39 a taxpayer subject to tax under ORS chapter 316, 317 or 318. The transfer must comply with  
 40 ORS 315.056.

41 (13) The Director of the Oregon Business Development Department may order the sus-  
 42 pension or revocation of a final certification issued under section 8 of this 2023 Act, as pro-  
 43 vided in ORS 315.061.

44 (14) The credit allowed under this section is not in lieu of any depreciation or amorti-  
 45 zation deduction for the qualified facility to which the taxpayer otherwise may be entitled for

1 purposes of ORS chapter 316, 317 or 318 for such year.

2 (15) The taxpayer's adjusted basis for determining gain or loss may not be decreased by  
3 any tax credits allowed under this section.

4 (16) The definitions in section 4 of this 2023 Act apply to this section.

5 **SECTION 3.** Sections 4 to 12 of this 2023 Act are added to and made a part of ORS  
6 chapter 285C.

7 **SECTION 4.** As used in sections 2 and 4 to 12 of this 2023 Act:

8 (1) "Capital investment" means an expenditure to acquire, lease or improve land,  
9 buildings, machinery, equipment or fixtures or other property that is used in operating a  
10 business.

11 (2) "Environmental benefit" means:

12 (a) The prevention, control or reduction of air pollution or water pollution;

13 (b) The prevention, control or reduction of the generation or storage of solid waste, as  
14 defined in ORS 459.005, or hazardous waste, as defined in ORS 466.005; or

15 (c) The recycling or environmentally safe disposal of used oil.

16 (3) "Facility" means a single parcel, contiguous parcels or parcels that are separated only  
17 by a public thoroughfare or right-of-way, of owned or leased land in this state, the structures  
18 and personal property contained on the land or any part of the structures occupied by the  
19 owner.

20 (4) "Headquarters" means a principal central administrative office where primary head-  
21 quarters related functions and services are performed, including financial, personnel, ad-  
22 ministrative, legal, planning and similar business functions.

23 (5)(a) "Manufacturing" means fabricating, producing or manufacturing raw or prepared  
24 materials into usable products, imparting new forms, qualities, properties and combinations.

25 (b) "Manufacturing" does not include generating electricity.

26 (6) "Qualified environmental investment" means the amount of an investment in goods  
27 and services reasonably necessary to produce an environmental benefit.

28 (7) "Qualified facility" means a facility in this state that devotes at least 80 percent of  
29 the property and payroll at the facility to one or more of the following:

30 (a) Qualified manufacturing.

31 (b) Qualified headquarters.

32 (c) Qualified research.

33 (d) An environmental benefit.

34 (8) "Qualified headquarters" means a global, national or regional headquarters for a  
35 taxpayer that derives at least 65 percent of its revenue from sales made outside of this state.

36 (9) "Qualified manufacturing" means manufacturing tangible products in this state if at  
37 least 65 percent of the product is at least one of the following:

38 (a) Directly sold out of state.

39 (b) Directly sold to one or more qualified facilities.

40 (10) "Qualified research" has the meaning given that term in section 41(d) of the Internal  
41 Revenue Code, except that the research must be conducted by a taxpayer involved in manu-  
42 facturing that derives at least 65 percent of its revenue from out-of-state sales.

43 (11)(a) "Qualifying investment" means investment in land, buildings, machinery, equip-  
44 ment and fixtures for expansion of an existing qualified facility or establishment of a new  
45 qualified facility in this state. If the qualified facility is a build-to-suit facility leased to the

1 taxpayer, “qualifying investment” includes the costs prescribed in this paragraph that are  
2 spent by the third-party developer with respect to the qualified facility.

3 (b) “Qualifying investment” does not include relocating an existing qualified facility in  
4 this state to another location in this state without additional capital investment of at least  
5 \$250,000.

6 (12) “Rural area” has the meaning given that term in ORS 285C.350.

7 **SECTION 5.** For a qualified facility, the total amount of potential tax credit that receives  
8 a preliminary certification from the Director of the Oregon Business Development Depart-  
9 ment may not exceed \$30 million.

10 **SECTION 6.** (1) Prior to the placement in service of a qualified facility, any person may  
11 apply to the Oregon Business Development Department for preliminary certification under  
12 section 7 of this 2023 Act if:

13 (a) The qualified facility complies with the standards adopted by the Director of the  
14 Oregon Business Development Department; and

15 (b) The applicant will be the owner, contract purchaser or lessee of the qualified facility  
16 at the time of placement in service of the qualified facility.

17 (2) An application for preliminary certification shall be made in writing on a form pre-  
18 pared by the department and shall contain:

19 (a) The applicant’s name, address, telephone number and federal taxpayer identification  
20 number or numbers.

21 (b) The name, address, telephone number and e-mail address of a contact person for the  
22 applicant.

23 (c) The address of the site where the qualified facility will be located.

24 (d) A detailed description of the qualified facility and fixed capital assets.

25 (e) An estimate of the capital investment and number of employment positions with job  
26 duties associated with the qualified facility, including:

27 (A) A schedule of qualifying investments.

28 (B) A list of full-time employment positions, the estimated number of employees to be  
29 hired for the positions each year during the first five years of operation and the annual  
30 wages for each position, calculated without employee-related benefits.

31 (f) Other information as required by the department to determine eligibility for the in-  
32 come tax credits and the amount of income tax credits, as prescribed by this section.

33 (g) An affirmation, signed by an authorized executive representing the applicant, that the  
34 applicant:

35 (A) Agrees to furnish records of expenditures for qualifying investments to the depart-  
36 ment on request.

37 (B) Will continue in business at the qualified facility for five full calendar years after  
38 final certification for the credit, other than for reasons beyond the control of the applicant.

39 (C) Agrees to furnish to the department information regarding the amount of income tax  
40 credits claimed each year.

41 (D) Authorizes the Department of Revenue to provide tax information to the Oregon  
42 Business Development Department for the purpose of determining any inconsistency in in-  
43 formation furnished by the applicant.

44 (E) Agrees to allow site visits and audits to verify the applicant’s continuing qualification  
45 and the accuracy of information submitted to the department.

1 (G) Consents to the adjustment or recapture of any amount of income tax credit due to  
2 noncompliance with this section.

3 (h) Letters of good standing from the Department of Revenue stating that the applicant  
4 is not delinquent in paying taxes.

5 (i) The anticipated total qualifying investment.

6 (j) Information on the number and type of employment positions that will be created by  
7 the qualified facility, the number of employment positions sustained throughout the con-  
8 struction and operation of the qualified facility and the benefits of the qualified facility with  
9 regard to overall economic activity in this state.

10 (k) Information demonstrating that the qualified facility will comply with applicable state  
11 and local laws and regulations and obtain required licenses and permits.

12 (L) Any other information the director considers necessary to determine whether the  
13 qualified facility is in accordance with the provisions of sections 4 to 12 of this 2023 Act, and  
14 any applicable rules or standards adopted by the director.

15 (3) An application for preliminary certification shall be accompanied by a fee established  
16 under section 9 of this 2023 Act. The director may refund all or a portion of the fee if the  
17 application for certification is rejected.

18 **SECTION 7.** (1) The Director of the Oregon Business Development Department may re-  
19 quire an applicant for certification of a qualified facility to submit plans, specifications and  
20 contract terms, and after examination of the plans, specifications and terms may request  
21 corrections and revisions.

22 (2) If the director determines that the qualified facility is technically feasible and should  
23 operate in accordance with the representations made by the applicant, and is in accordance  
24 with the provisions of sections 4 to 12 of this 2023 Act and any applicable rules or standards  
25 adopted by the director, the director may issue a preliminary certificate approving the  
26 placement in service of the qualified facility. The certificate shall indicate the potential  
27 amount of tax credit allowable and shall list any conditions for claiming the credit.

28 (3) In accordance with ORS chapter 183, the director may issue an order altering, con-  
29 ditioning, suspending or denying preliminary certification if the director determines that:

30 (a) The qualified facility does not comply with the provisions of sections 4 to 12 of this  
31 2023 Act and applicable rules and standards;

32 (b) The applicant has previously received preliminary or final certification for the quali-  
33 fied facility;

34 (c) The applicant was directly involved in an act for which any state agency has levied  
35 civil penalties or revoked, canceled or suspended any certification; or

36 (d) The applicant or the principal, director, officer, owner, majority shareholder or  
37 member of the applicant, or the manager of the applicant if the applicant is a limited liability  
38 company, is in arrears for payments owed to any government agency while in any capacity  
39 with direct or indirect control over a business.

40 **SECTION 8.** (1) The Director of the Oregon Business Development Department may issue  
41 a final certification for a qualified facility under this section only if:

42 (a) The qualified facility was installed or constructed under a preliminary certificate of  
43 approval issued under section 7 of this 2023 Act;

44 (b) The applicant demonstrates the ability to provide the information required by section  
45 6 (2) of this 2023 Act and does not violate any condition that may be imposed as described in

1 subsection (4) of this section; and

2 (c) The qualified facility was installed or constructed in accordance with the applicable  
 3 provisions of sections 4 to 12 of this 2023 Act and any applicable rules or standards adopted  
 4 by the director.

5 (2) Any person may apply to the Oregon Business Development Department for final  
 6 certification of a qualified facility:

7 (a) If the person received preliminary certification for the qualified facility under section  
 8 7 of this 2023 Act; and

9 (b) After placement in service of the qualified facility.

10 (3) An application for final certification shall be made in writing on a form prepared by  
 11 the department and shall contain:

12 (a) A statement that the conditions of the preliminary certification have been complied  
 13 with;

14 (b) The actual amount of the qualifying investment, including copies of receipts for pur-  
 15 chase and installation of the qualified facility;

16 (c) The amount of the credit under section 2 of this 2023 Act that is to be claimed;

17 (d) The number and type of employment positions created by the operation and mainte-  
 18 nance of the qualified facility over the five-year period beginning with the year of preliminary  
 19 certification under section 7 of this 2023 Act and information on the benefits of the qualified  
 20 facility with regard to overall economic activity in this state;

21 (e) Information sufficient to demonstrate that the qualified facility will remain in opera-  
 22 tion for at least five years, unless the director by rule specifies another period of operation;

23 (f) Documentation of compliance with applicable state and local laws and regulations and  
 24 licensing and permitting requirements as defined by the director; and

25 (g) Any other information determined by the director to be necessary prior to issuance  
 26 of a final certificate, including inspection of the qualified facility by the department.

27 (4) After the filing of the application under this section, the director may issue the cer-  
 28 tificate together with any conditions that the director determines are appropriate to promote  
 29 the purposes of sections 2 and 4 to 12 of this 2023 Act. If the applicant is an entity subject  
 30 to regulation by the Public Utility Commission, the director may consult with the commis-  
 31 sion prior to issuance of the certificate. The action of the director shall include certification  
 32 of the actual cost of the qualified facility. However, the director may not certify an amount  
 33 for tax credit purposes that is more than the amount approved in the preliminary certificate  
 34 issued for the qualified facility.

35 (5) If the director rejects an application for final certification, or certifies a lesser  
 36 amount of credit than was claimed in the application, the director shall send to the applicant  
 37 written notice of the action, together with a statement of the findings and reasons for the  
 38 action, by certified mail, before the 60th day after the filing of the application. Failure of the  
 39 director to act constitutes rejection of the application.

40 (6) Upon approval of an application for final certification of a qualified facility, the di-  
 41 rector shall certify the qualified facility. The final certification shall indicate the amount of  
 42 qualifying investment attributable to the qualified facility and the total qualified facility cost.

43 (7) The director may establish by rule timelines and intermediate deadlines for sub-  
 44 mission of application materials.

45 **SECTION 9.** By rule and after hearing, the Director of the Oregon Business Development

1 Department may adopt a schedule of reasonable fees that the Oregon Business Development  
 2 Department may require of applicants for preliminary or final certification of a qualified fa-  
 3 cility under sections 4 to 12 of this 2023 Act. Before the adoption or revision of the fees, the  
 4 department shall estimate the total cost of the program to the department. The fees shall  
 5 be used to recover the anticipated cost of administering and enforcing the provisions of  
 6 sections 4 to 12 of this 2023 Act, including filing, investigating, granting and rejecting appli-  
 7 cations for certification and ensuring compliance with sections 4 to 12 of this 2023 Act, and  
 8 shall be designed not to exceed the total cost estimated by the department. Any excess fees  
 9 shall be held by the department and shall be used by the department to reduce any future  
 10 fee increases. The fee may vary according to the size and complexity of the qualified  
 11 facility. The fee is not considered part of the cost of the qualified facility to be certified.

12 **SECTION 10.** (1) A certificate issued under section 8 of this 2023 Act is required for  
 13 purposes of obtaining tax credits in accordance with section 2 of this 2023 Act. Such certi-  
 14 fication shall be granted for a period not to exceed five years. The five-year period shall begin  
 15 with the tax year of the applicant during which the completed application for final certifica-  
 16 tion of the qualified facility under section 8 of this 2023 Act is received by the Oregon Busi-  
 17 ness Development Department.

18 (2) If the original owner of the certificate uses any portion of the credit, the certificate  
 19 becomes nontransferable.

20 (3) For a transferee holding a credit that has been transferred, the five-year period shall  
 21 begin with the tax year in which the transferee pays for the credit.

22 **SECTION 11.** (1) The total amount of potential tax credits for all qualified facilities in this  
 23 state may not, at the time of preliminary certification under section 7 of this 2023 Act, ex-  
 24 ceed \$ \_\_\_\_\_ million for any tax year.

25 (2) In the event that the Director of the Oregon Business Development Department re-  
 26 ceives applications for preliminary certification with a total amount of potential tax credits  
 27 in excess of the limitation in subsection (1) of this section, the director shall allocate the  
 28 issuance of preliminary certifications according to standards and criteria established by rule  
 29 by the director.

30 **SECTION 12.** The Oregon Business Development Department shall by rule establish pol-  
 31 icies and procedures for the administration and enforcement of the provisions of sections 2  
 32 and 4 to 12 of this 2023 Act, including standards for what constitutes a single qualified fa-  
 33 cility.

34 **SECTION 13.** ORS 314.772, as amended by section 11, chapter 34, Oregon Laws 2022, and sec-  
 35 tion 15, chapter 115, Oregon Laws 2022, is amended to read:

36 314.772. (1) Except as provided in ORS 314.766 (5)(b), the tax credits allowed or allowable to a  
 37 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The  
 38 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are  
 39 allowable to the shareholders of the S corporation.

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

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

4 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax  
 5 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS  
 6 316.117, then that provision shall apply to the nonresident shareholder.

7 (5) As used in this section, “business tax credit” means the following credits: ORS 315.104  
 8 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141  
 9 (biomass production for biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture  
 10 workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent care assistance), ORS  
 11 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.237 (employee  
 12 and dependent scholarships), ORS 315.271 (individual development accounts), ORS 315.304 (pollution  
 13 control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy  
 14 conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy re-  
 15 source equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation facili-  
 16 ties), ORS 315.506 (tribal taxes on reservation enterprise zones and reservation partnership zones),  
 17 ORS 315.507 (electronic commerce), ORS 315.514 (film production development contributions), ORS  
 18 315.523 (employee training programs), ORS 315.533 (low income community jobs initiative), ORS  
 19 315.593 (short line railroads), ORS 315.640 (university venture development funds), ORS 315.643  
 20 (Opportunity Grant Fund contributions), ORS 315.675 (Trust for Cultural Development Account  
 21 contributions), ORS 317.097 (loans for affordable housing), ORS 317.124 (long term enterprise zone  
 22 facilities), ORS 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified research  
 23 expenses) and ORS 317.154 (alternative qualified research expenses) and section 9, chapter 774,  
 24 Oregon Laws 2013 (alternative fuel vehicle contributions), section 2, chapter 34, Oregon Laws 2022  
 25 (small forest option), and section 8, chapter 115, Oregon Laws 2022 (agricultural overtime pay), **and**  
 26 **section 2 of this 2023 Act (qualified facilities).**

27 **SECTION 14.** ORS 318.031, as amended by section 12, chapter 34, Oregon Laws 2022, and sec-  
 28 tion 16, chapter 115, Oregon Laws 2022, is amended to read:

29 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter  
 30 317 shall be administered as uniformly as possible (allowance being made for the difference in im-  
 31 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-  
 32 corporated into and made a part of this chapter: ORS 315.104, 315.141, 315.156, 315.176, 315.204,  
 33 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506, 315.507, 315.523, 315.533, 315.593 and  
 34 315.643 and section 2, chapter 34, Oregon Laws 2022, and section 8, chapter 115, Oregon Laws 2022,  
 35 **and section 2 of this 2023 Act** (all only to the extent applicable to a corporation) and ORS chapter  
 36 317.

37 **SECTION 15.** Sections 2 and 4 to 12 of this 2023 Act apply to new capital investments  
 38 made in a qualified facility on or after July 1, 2023, and to tax years beginning on or after  
 39 January 1, 2024, and before January 1, 2030.

40 **SECTION 16.** This 2023 Act takes effect on the 91st day after the date on which the 2023  
 41 regular session of the Eighty-second Legislative Assembly adjourns sine die.