

**A-Engrossed**  
**House Bill 2852**

Ordered by the House April 25  
Including House Amendments dated April 25

Sponsored by Representative LININGER; Representatives KENY-GUYER, MCLAIN, NOSSE, RAYFIELD

**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.

*[Extends sunset for]* **For purpose of tax credit for affordable housing lenders, requires Housing and Community Services Department to make annual determination of remaining balance of reserved but not certified tax credits. Directs Department of Revenue, in cooperation with Housing and Community Services Department, to conduct annual auction of reserved credits. Directs auction proceeds to be used for provision of housing for persons and families of lower income, with priority given to manufactured dwelling parks and manufactured dwellings.**

Increases total amount of tax credits allowed for all taxpayers per fiscal year. Applies to tax years beginning on or after January 1, 2018.

**Extends sunset for tax credit.**

Takes effect on 91st day following adjournment sine die.

**A BILL FOR AN ACT**

1  
2 Relating to a tax credit for affordable housing lenders; creating new provisions; amending ORS  
3 317.097 and section 30, chapter 913, Oregon Laws 2009; and prescribing an effective date.

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

5 **SECTION 1.** Section 30, chapter 913, Oregon Laws 2009, as amended by section 1, chapter 475,  
6 Oregon Laws 2011, is amended to read:

7 **Sec. 30.** The Housing and Community Services Department may not issue a certificate under  
8 ORS 317.097 on or after January 1, *[2020]* **2026**.

9 **SECTION 2.** Sections 3 and 4 of this 2017 Act are added to and made a part of ORS  
10 chapter 315.

11 **SECTION 3.** (1) Not later than October 1 of each year, the Housing and Community Ser-  
12 vices Department shall by rule determine, out of the amount allowed under ORS 317.097 (8),  
13 any remaining balance that has been reserved for credits allowed for tax years beginning in  
14 the calendar year, but for which credits have not yet been certified. This amount may not  
15 include credits that have not been reserved.

16 (2) The Department of Revenue shall, in cooperation with the Housing and Community  
17 Services Department, conduct an auction of the balance, as determined under subsection (1)  
18 of this section, of reserved tax credits allowed under ORS 317.097. The auction shall be con-  
19 ducted no later than December 1 of the tax year for which the credits are allowed. The de-  
20 partment may conduct the auction in the manner that it determines is best suited to  
21 maximize the return to the state on the sale of tax credit certifications and shall announce  
22 a reserve bid prior to conducting the auction. The reserve amount shall be at least 95 percent  
23 of the total amount of the tax credit. Moneys necessary to reimburse the Department of

**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 Revenue for the actual costs incurred by the department in administering the auction, not  
2 to exceed 0.25 percent of auction proceeds, are continuously appropriated to the department.

3 (3) The Department of Revenue shall deposit net receipts from the auction in the General  
4 Housing Account created under ORS 458.620. Auction proceeds shall be used only for pur-  
5 poses related to the provision of housing for persons and families of lower income, defined  
6 to mean having income not more than 80 percent of area median income, and with priority  
7 given to achieving affordability and habitability of manufactured dwelling parks and manu-  
8 factured dwellings. The Housing and Community Services Department shall, with the advice  
9 and consent of the Oregon Housing Stability Council, determine the best use of the auction  
10 proceeds each year based on need, and the auction proceeds shall be used throughout the  
11 state.

12 (4)(a) Manufactured dwelling parks preserved or developed with auction proceeds must  
13 be owned by a nonprofit corporation, manufactured dwelling park nonprofit cooperative,  
14 state governmental entity, local unit of government as defined in ORS 466.706 or housing  
15 authority.

16 (b) Manufactured dwellings preserved or replaced with auction proceeds must be owned  
17 by an individual, nonprofit corporation, manufactured dwelling park nonprofit cooperative,  
18 state governmental entity, local unit of government as defined in ORS 466.706 or housing  
19 authority.

20 **SECTION 4. A credit purchased at auction under section 3 of this 2017 Act:**

21 (1) May be allowed against the taxes otherwise due under ORS chapters 316, 317 or 318;  
22 and

23 (2) Notwithstanding ORS 317.097 (2), shall equal the face value of the credit.

24 **SECTION 5.** ORS 317.097, as amended by section 23, chapter 33, Oregon Laws 2016, is amended  
25 to read:

26 317.097. (1) As used in this section:

27 (a) "Annual rate" means the yearly interest rate specified on the note, and not the annual per-  
28 centage rate, if any, disclosed to the applicant to comply with the federal Truth in Lending Act.

29 (b) "Finance charge" means the total of all interest, loan fees, interest on any loan fees financed  
30 by the lending institution, and other charges related to the cost of obtaining credit.

31 (c) "Lending institution" means any insured institution, as that term is defined in ORS 706.008,  
32 any mortgage banking company that maintains an office in this state or any community development  
33 corporation that is organized under the Oregon Nonprofit Corporation Law.

34 (d) "Manufactured dwelling park" has the meaning given that term in ORS 446.003.

35 (e) "Nonprofit corporation" means a corporation that is exempt from income taxes under section  
36 501(c)(3) or (4) of the Internal Revenue Code as amended and in effect on December 31, 2015.

37 (f) "Preservation project" means housing that was previously developed as affordable housing  
38 with a contract for rent assistance from the United States Department of Housing and Urban De-  
39 velopment or the United States Department of Agriculture and that is being acquired by a spon-  
40 soring entity.

41 (g) "Qualified assignee" means any investor participating in the secondary market for real estate  
42 loans.

43 (h) "Qualified borrower" means any borrower that is a sponsoring entity that has a controlling  
44 interest in the real property that is financed by a qualified loan. A controlling interest includes, but  
45 is not limited to, a controlling interest in the general partner of a limited partnership that owns the

1 real property.

2 (i) "Qualified loan" means:

3 (A) A loan that meets the criteria stated in subsection (5) of this section or that is made to re-  
4 finance a loan that meets the criteria described in subsection (5) of this section; or

5 (B) The purchase by a lending institution of bonds, as defined in ORS 286A.001, issued on behalf  
6 of the Housing and Community Services Department, the proceeds of which are used to finance or  
7 refinance a loan that meets the criteria described in subsection (5) of this section.

8 (j) "Sponsoring entity" means a nonprofit corporation, nonprofit cooperative, state governmental  
9 entity, local unit of government as defined in ORS 466.706, housing authority or any other person,  
10 provided that the person has agreed to restrictive covenants imposed by a nonprofit corporation,  
11 nonprofit cooperative, state governmental entity, local unit of government or housing authority.

12 (2) The Department of Revenue shall allow a credit against taxes otherwise due under this  
13 chapter for the taxable year to a lending institution that makes a qualified loan certified by the  
14 Housing and Community Services Department as provided in subsection (7) of this section. The  
15 amount of the credit is equal to the difference between:

16 (a) The amount of finance charge charged by the lending institution during the taxable year at  
17 an annual rate less than the market rate for a qualified loan that is made before January 1, [2020]  
18 **2026**, that complies with the requirements of this section; and

19 (b) The amount of finance charge that would have been charged during the taxable year by the  
20 lending institution for the qualified loan for housing construction, development, acquisition or re-  
21 habilitation measured at the annual rate charged by the lending institution for nonsubsidized loans  
22 made under like terms and conditions at the time the qualified loan for housing construction, de-  
23 velopment, acquisition or rehabilitation is made.

24 (3) The maximum amount of credit for the difference between the amounts described in sub-  
25 section (2)(a) and (b) of this section may not exceed four percent of the average unpaid balance of  
26 the qualified loan during the tax year for which the credit is claimed.

27 (4) Any tax credit allowed under this section that is not used by the taxpayer in a particular  
28 year may be carried forward and offset against the taxpayer's tax liability for the next succeeding  
29 tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and  
30 used in the second succeeding tax year, and likewise, any credit not used in that second succeeding  
31 tax year may be carried forward and used in the third succeeding tax year, and any credit not used  
32 in that third succeeding tax year may be carried forward and used in the fourth succeeding tax year,  
33 and any credit not used in that fourth succeeding tax year may be carried forward and used in the  
34 fifth succeeding tax year, but may not be carried forward for any tax year thereafter.

35 (5) To be eligible for the tax credit allowable under this section, a lending institution must make  
36 a qualified loan by either purchasing bonds, as defined in ORS 286A.001, issued on behalf of the  
37 Housing and Community Services Department, the proceeds of which are used to finance or refi-  
38 nance a loan that meets the criteria stated in this subsection, or by making a loan directly to:

39 (a) An individual or individuals who own a dwelling, participate in an owner-occupied commu-  
40 nity rehabilitation program and are certified by the local government or its designated agent as  
41 having an income level when the loan is made of less than 80 percent of the area median income;

42 (b) A qualified borrower who:

43 (A) Uses the loan proceeds to finance construction, development, acquisition or rehabilitation  
44 of housing; and

45 (B) Provides a written certification executed by the Housing and Community Services Depart-

1 ment that the:

2 (i) Housing created by the loan is or will be occupied by households earning less than 80 percent  
3 of the area median income; and

4 (ii) Full amount of savings from the reduced interest rate provided by the lending institution is  
5 or will be passed on to the tenants in the form of reduced housing payments, regardless of other  
6 subsidies provided to the housing project;

7 (c) Subject to subsection (14) of this section, a qualified borrower who:

8 (A) Uses the loan proceeds to finance construction, development, acquisition or rehabilitation  
9 of housing consisting of a manufactured dwelling park; and

10 (B) Provides a written certification executed by the Housing and Community Services Depart-  
11 ment that the housing will continue to be operated as a manufactured dwelling park during the pe-  
12 riod for which the tax credit is allowed; or

13 (d) A qualified borrower who:

14 (A) Uses the loan proceeds to finance acquisition or rehabilitation of housing consisting of a  
15 preservation project; and

16 (B) Provides a written certification executed by the Housing and Community Services Depart-  
17 ment that the housing preserved by the loan:

18 (i) Is or will be occupied by households earning less than 80 percent of the area median income;  
19 and

20 (ii) Is the subject of a rent assistance contract with the United States Department of Housing  
21 and Urban Development or the United States Department of Agriculture that will be maintained by  
22 the qualified borrower.

23 (6) A loan made to refinance a loan that meets the criteria stated in subsection (5) of this sec-  
24 tion must be treated the same as a loan that meets the criteria stated in subsection (5) of this sec-  
25 tion.

26 (7) For a qualified loan to be eligible for the tax credit allowable under this section, the Housing  
27 and Community Services Department must execute a written certification for the qualified loan that:

28 (a) Specifies the period, not to exceed 20 years, as determined by the Housing and Community  
29 Services Department, during which the tax credit is allowed for the qualified loan; and

30 (b) States that the qualified loan is within the limitation imposed by subsection (8) of this sec-  
31 tion.

32 (8) The Housing and Community Services Department may certify qualified loans that are eligi-  
33 ble under subsection (5) of this section if the total credits attributable to all qualified loans eligible  
34 for credits under this section and then outstanding do not exceed [~~\$17 million~~] **\$25 million** for any  
35 fiscal year. In making loan certifications under subsection (7) of this section, the Housing and  
36 Community Services Department shall attempt to distribute the tax credits statewide, but shall  
37 concentrate the tax credits in those areas of the state that are determined by the Oregon Housing  
38 Stability Council to have the greatest need for affordable housing.

39 (9) The tax credit provided for in this section may be taken whether or not:

40 (a) The financial institution is eligible to take a federal income tax credit under section 42 of  
41 the Internal Revenue Code with respect to the project financed by the qualified loan; or

42 (b) The project receives financing from bonds, the interest on which is exempt from federal  
43 taxation under section 103 of the Internal Revenue Code.

44 (10) For a qualified loan defined in subsection (1)(i)(B) of this section financed through the pur-  
45 chase of bonds, the interest of which is exempt from federal taxation under section 103 of the

1 Internal Revenue Code, the amount of finance charge that would have been charged under sub-  
2 section (2)(b) of this section is determined by reference to the finance charge that would have been  
3 charged if the federally tax exempt bonds had been issued and the tax credit under this section did  
4 not apply.

5 (11) A lending institution may sell a qualified loan for which a certification has been executed  
6 to a qualified assignee whether or not the lending institution retains servicing of the qualified loan  
7 so long as a designated lending institution maintains records, annually verified by a loan servicer,  
8 that establish the amount of tax credit earned by the taxpayer throughout each year of eligibility.

9 (12) Notwithstanding any other provision of law, a lending institution that is a community de-  
10 velopment corporation organized under the Oregon Nonprofit Corporation Law may transfer all or  
11 part of a tax credit allowed under this section to one or more other lending institutions that are  
12 stockholders or members of the community development corporation or that otherwise participate  
13 through the community development corporation in the making of one or more qualified loans for  
14 which the tax credit under this section is allowed.

15 (13) The lending institution shall file an annual statement with the Housing and Community  
16 Services Department, specifying that it has conformed with all requirements imposed by law to  
17 qualify for a tax credit under this section.

18 (14) Notwithstanding subsection (1)(h) and (j) of this section, a qualified borrower on a loan to  
19 finance the construction, development, acquisition or rehabilitation of a manufactured dwelling park  
20 under subsection (5)(c) of this section must be a nonprofit corporation, manufactured dwelling park  
21 nonprofit cooperative, state governmental entity, local unit of government as defined in ORS 466.706  
22 or housing authority.

23 (15) The Housing and Community Services Department and the Department of Revenue may  
24 adopt rules to carry out the provisions of this section.

25 **SECTION 6. The amendments to ORS 317.097 by section 5 of this 2017 Act apply to tax**  
26 **years beginning on or after January 1, 2018.**

27 **SECTION 7. This 2017 Act takes effect on the 91st day after the date on which the 2017**  
28 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**

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