

B-Engrossed Senate Bill 229

Ordered by the Senate April 23
Including Senate Amendments dated March 26 and April 23

Sponsored by Senator DECKERT, Representative HILL

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.

Authorizes Economic and Community Development Department to designate up to five existing enterprise zones as electronic commerce zones. Exempts certain property of business firm engaged in electronic commerce from property taxation if located in enterprise zone designated for electronic commerce. Allows credit against income or corporate excise tax equal to 25 percent of specified investments within zone, not to exceed **lesser of \$2 million or tax liability of taxpayer.**

A BILL FOR AN ACT

1
2 Relating to taxation; creating new provisions; and amending ORS 285B.650, 285B.707, 285B.713,
3 314.752 and 318.031.

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

5 **SECTION 1.** ORS 285B.650 is amended to read:

6 285B.650. As used in ORS 285B.650 to 285B.728, unless the context requires otherwise:

7 (1) "Business firm" means a person operating or conducting one or more trades or businesses
8 but does not include any governmental agency, municipal corporation or nonprofit corporation.

9 **(2) "Electronic commerce" means engaging in commercial or retail transactions pre-**
10 **dominantly over the Internet or a computer network, utilizing the Internet as a platform for**
11 **transacting business or facilitating the use of the Internet by other persons for business**
12 **transactions, and may be further defined by the Economic and Community Development**
13 **Department by rule.**

14 [(2)] **(3)** "Eligible business firm" means a firm engaged in an activity described under ORS
15 285B.707 which may file an application for precertification under ORS 285B.719.

16 [(3)] **(4)** "Employee" means a person who works more than 32 hours per week, but does not in-
17 clude persons with temporary or seasonal jobs or persons hired solely to construct qualified prop-
18 erty.

19 [(4)] **(5)** "Enterprise zone" means one of the 30 areas designated or terminated and redesignated
20 by order of the Governor under ORS 284.160 (1987 Replacement Part) before October 3, 1989, one
21 of the 17 areas designated by the Director of the Economic and Community Development Depart-
22 ment under ORS 285B.653, areas designated under ORS 285B.677 and areas designated under ORS
23 285B.689.

24 [(5)] **(6)** "First-source hiring agreement" means an agreement between a precertified business
25 firm and a publicly funded job training provider whereby the job training provider refers qualified
26 candidates to the firm for new jobs and job openings in the firm.

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)] (7) “Modification” means modernization, renovation or remodeling of an existing building
2 or structure.

3 [(7)] (8) “Nonurban enterprise zone” means an enterprise zone located outside a regional or
4 metropolitan urban growth boundary.

5 [(8)] (9) “Precertified business firm” means an eligible business firm whose application for pre-
6 certification has been approved under ORS 285B.719 and which may apply for a property tax ex-
7 emption under ORS 285B.722.

8 [(9)] (10) “Publicly funded job training provider” includes but is not limited to, community col-
9 leges, Job Training Partnership Act service providers, and other similar programs.

10 [(10)] (11) “Qualified business firm” means a business firm described in ORS 285B.704 whose
11 application for a property tax exemption has been approved under ORS 285B.722.

12 [(11)] (12) “Qualified property” means property described under ORS 285B.713.

13 [(12)] (13) “Sponsor” means the city or county that applied for and received approval of an en-
14 terprise zone under ORS 284.150 and 284.160 (1987 Replacement Part), under ORS 285B.656 and
15 285B.659, under ORS 285B.677 or 285B.686 or under ORS 285B.689.

16 [(13)] (14) “Urban enterprise zone” means an enterprise zone in a metropolitan statistical area,
17 as defined by the most recent federal decennial census, located inside a regional or metropolitan
18 urban growth boundary.

19 **SECTION 2. (1) A sponsor of an existing enterprise zone may seek to have the zone**
20 **designated for electronic commerce under this section.**

21 **(2) The sponsor shall file an application to have the zone designated for electronic com-**
22 **merce with the Economic and Community Development Department. The application shall**
23 **be in the form and contain the information that the department by rule may require.**

24 **(3) The application shall be accompanied by a copy of a resolution, adopted by the gov-**
25 **erning body of the sponsor, requesting that the zone be designated for electronic commerce.**

26 **(4) The department shall review applications for electronic commerce designation and**
27 **shall approve no more than five zones for electronic commerce designation. In approving**
28 **zones for electronic commerce designation, the department shall strive to approve zones for**
29 **electronic commerce designation in different geographic areas of this state.**

30 **SECTION 3.** ORS 285B.707 is amended to read:

31 285B.707. (1) Except as provided in subsections (3) and (4) of this section, to be an eligible
32 business firm, a business firm must be engaged in the business of providing goods, products or ser-
33 vices to other businesses, and not to the general public for personal or household use or consump-
34 tion, through activities including, but not limited to, manufacturing, assembly, fabrication,
35 processing, shipping or storage.

36 (2) Businesses significantly engaged in business activities within the enterprise zone such as
37 retail sales or services, child care, housing, retail food service, health care, tourism, entertainment,
38 financial services, professional services, leasing space to others, property management, construction
39 or other similar activities are not eligible business firms.

40 (3) Notwithstanding subsection (1) or (2) of this section, a business firm that operates a hotel,
41 motel or destination resort is an eligible business firm regardless of the sale of services for personal
42 consumption, if allowed in the enterprise zone under ORS 285B.716.

43 (4) Notwithstanding any other provision of this section, if a business firm described in subsection
44 (2) of this section engages in an activity described in subsection (1) of this section, the business firm
45 is an eligible business firm if the activity is performed at a location that is separate from the ac-

1 tivity of the firm that is described in subsection (2) of this section. For purposes of determining
2 whether a business firm described in this subsection satisfies the requirements of ORS 285B.704, only
3 the operations of the firm that are described in subsection (1) of this section and employees working
4 a majority of their time in those operations shall be considered.

5 (5) Two or more business firms that otherwise meet the requirements of this section may elect
6 to be treated as one eligible business firm if 100 percent of the equity interest in the business firms
7 is owned by the same person or persons, or if one of the business firms owns 100 percent of the
8 equity interest of the other or others.

9 (6) Notwithstanding subsection (1) or (2) of this section, a business firm engaged in the activity
10 of providing a retail or financial service is an eligible business firm if:

11 (a) The activity serves customers by responding to orders or requests received only by tele-
12 phone, computer, the Internet or similar means of telecommunications; and

13 (b) Not less than 90 percent of the customers or orders are located and originate in an area from
14 which long distance telephone charges, in the absence of a toll-free number, would apply if the order
15 were placed by telephone.

16 (7) Notwithstanding subsection (1) or (2) of this section, a business firm that makes an invest-
17 ment in qualified property at a facility that serves statewide, regional, national or global operations
18 of the firm through administrative, design, financial, management, marketing or other activities is
19 an eligible business firm, without regard to the relationship of such activities to any otherwise eli-
20 gible activities within the enterprise zone if:

21 (a) In approving the application for precertification, the zone sponsor includes with the appli-
22 cation a formal finding that the facility complies with the requirements of this subsection and that
23 the size of the proposed investment, the employment at the facility or the nature of the activities
24 at the facility will significantly enhance the local economy, in relation to the overall purpose and
25 employment of the zone;

26 (b) The actual investment and facility of the firm are consistent with the descriptions presented
27 in the precertification application; and

28 (c) For purposes of ORS 285B.704, all employees at the facility constitute employment of the
29 firm, as defined in ORS 285B.704.

30 **(8) Notwithstanding subsection (1) or (2) of this section, a business firm that is engaged**
31 **in electronic commerce is an eligible business firm if the enterprise zone has been approved**
32 **for electronic commerce designation under section 2 of this 2001 Act.**

33 **SECTION 4.** ORS 285B.713 is amended to read:

34 285B.713. (1) The property tax exemption provided under ORS 285B.698 shall be available only
35 for qualified property of a qualified business firm.

36 (2) The following kinds of property are qualified for the exemption allowed under ORS 285B.698:

37 (a) A new building or structure with a cost of \$25,000 or more.

38 (b) An addition to or modification of an existing building or structure. The total cost of quali-
39 fying additions or modifications to an existing building or structure shall be at least \$25,000 in one
40 assessment year. In order to satisfy the minimum investment requirement, the cost of two or more
41 additions or modifications made in one assessment year to a single building or structure may be
42 aggregated.

43 (c) Any real property machinery or equipment, whether new, used or reconditioned, that is
44 newly purchased, leased or transferred into the enterprise zone from outside the county within
45 which the zone is located and installed in property owned or leased by a qualified business firm.

1 (d) Any single item of personal property machinery or equipment, whether new, used or recon-
2 ditioned, that is newly purchased, leased or transferred into the enterprise zone from outside the
3 county within which the zone is located and installed in property owned or leased by a qualified
4 business firm and:

5 (A) That has a cost of at least \$1,000 if the property is used exclusively for producing tangible
6 goods **or is used in electronic commerce in a zone approved for electronic commerce desig-**
7 **nation under section 2 of this 2001 Act;** or

8 (B) That has a cost of at least \$50,000.

9 (e) A new building and associated structures owned by a governmental body that are leased to
10 one or more qualified business firms.

11 (f) Any property otherwise described in this section that is owned or leased and operated by a
12 business firm operating a hotel, motel or destination resort, to the extent that the property is lo-
13 cated on the same site as the hotel, motel or destination resort and is used primarily to serve
14 overnight guests of the hotel, motel or destination resort. For purposes of this paragraph, property
15 is primarily used to serve guests if at least 50 percent of any receipts from such use are paid by
16 guests.

17 (g) Any property otherwise described in this section that is owned or leased and operated by a
18 business firm described in ORS 285B.707 (4), to the extent that the property is used exclusively in
19 an activity described in ORS 285B.707 (1).

20 **(h) Any property otherwise described in this section that is owned or leased and operated**
21 **by a business firm that is engaged in electronic commerce, if the enterprise zone in which**
22 **the property is located is a zone approved for electronic commerce designation under section**
23 **2 of this 2001 Act.**

24 (3) The following property is not qualified for exemption under ORS 285B.698:

25 (a) Land.

26 (b) Self-propelled motorized vehicles.

27 (c) Property excluded under ORS 285B.698 (5).

28 **SECTION 5. Qualified property owned or leased and operated by a qualified business firm**
29 **engaged in electronic commerce may not receive an exemption under ORS 285B.698 unless**
30 **the electronic commerce operations of the firm are located in an enterprise zone that has**
31 **been approved for electronic commerce designation under section 2 of this 2001 Act.**

32 **SECTION 6. Sections 2 and 5 of this 2001 Act are added to and made a part of ORS**
33 **285B.650 to 285B.728.**

34 **SECTION 7. Section 8 of this 2001 Act is added to and made a part of ORS chapter 315.**

35 **SECTION 8. (1) A credit against the taxes that are otherwise due under ORS chapter 316**
36 **or, if the taxpayer is a corporation, under ORS chapter 317 or 318, shall be allowed to a**
37 **taxpayer that is a qualified business firm engaged in electronic commerce in an enterprise**
38 **zone that has been approved for electronic commerce designation under section 2 of this 2001**
39 **Act.**

40 **(2) The credit shall equal 25 percent of the investments made by the business firm during**
41 **the tax year in electronic commerce operations within the zone that are related to electronic**
42 **commerce sales, customer service, order fulfillment or broadband infrastructure.**

43 **(3) A credit under this section may not be allowed for an income tax year beginning in**
44 **a property tax year in which qualified property of the business firm is subject to property**
45 **tax.**

1 **(4) A credit allowed under this section may not exceed the lesser of \$2 million or the tax**
2 **liability of the taxpayer.**

3 **(5) Any tax credit otherwise allowable under this section that is not used by the taxpayer**
4 **in a particular year may be carried forward and offset against the taxpayer’s tax liability for**
5 **the next succeeding tax year. Any credit remaining unused in the next succeeding tax year**
6 **may be carried forward and used in the second succeeding tax year, and likewise any credit**
7 **not used in that second succeeding tax year may be carried forward and used in the third**
8 **succeeding tax year, and any credit not used in that third succeeding tax year may be carried**
9 **forward and used in the fourth succeeding tax year, and any credit not used in that fourth**
10 **succeeding tax year may be carried forward and used in the fifth succeeding tax year, but**
11 **may not be carried forward for any tax year thereafter.**

12 **(6) As used in this section, “business firm,” “electronic commerce,” “qualified business**
13 **firm” and “qualified property” have the meanings given those terms in ORS 285B.650.**

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

15 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
16 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
17 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
18 allowable to the shareholders of the S corporation.

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

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

28 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
29 credit that in the case of a nonresident that the credit be allowed in the proportion provided in ORS
30 316.117, then that provision shall apply to the nonresident shareholder.

31 (5) As used in this section, “business tax credit” means a tax credit granted to personal income
32 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive
33 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-
34 section as a business tax credit or is designated as a business tax credit by law or by the Depart-
35 ment of Revenue by rule and includes but is not limited to the following credits: ORS 315.104
36 (forestation and reforestation), ORS 315.134 (fish habitat improvement), ORS 315.138 (fish screening,
37 by-pass devices, fishways), ORS 315.156 (crop gleaning), ORS 315.164 (farmworker housing), ORS
38 315.204 (dependent care assistance), ORS 315.208 (dependent care facilities), ORS 315.234 (child de-
39 velopment program contributions), ORS 315.254 (youth apprenticeship sponsorship), ORS 315.304
40 (pollution control facility), ORS 315.324 (plastics recycling), ORS 315.354 and ORS 469.207 (energy
41 conservation facilities), ORS 315.504 (Oregon Capital Corporation), ORS 315.604 (bone marrow
42 transplant expenses) and ORS 317.115 (fueling stations necessary to operate an alternative fuel ve-
43 hicle) **and section 8 of this 2001 Act (electronic commerce).**

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

45 318.031. It being the intention of the Legislative Assembly that this chapter and the Corporation

1 Excise Tax Law of 1929 shall be administered as uniformly as possible (allowance being made for
2 the difference in imposition of the taxes and the operative date of this chapter), the provisions of
3 ORS 305.140 and 305.150 and ORS chapter 314 and of the following sections of ORS chapter 315 or
4 317, as amended on or before August 3, 1955, and as they may thereafter be amended, are incorpo-
5 rated into this chapter by this reference and made a part hereof: ORS 315.104, 315.134, 315.156,
6 315.204, 315.208, 315.234, 315.254, 315.304, 315.504 and 315.604 (all only to the extent applicable for
7 a corporation) and ORS 317.010, 317.013, 317.018 to 317.022, 317.030, 317.035, 317.038, 317.080, 317.152
8 to 317.154, 317.259 to 317.303, 317.310 to 317.386, 317.476 to 317.485, 317.510 to 317.635 and 317.705
9 to 317.725 and section 40, chapter 835, Oregon Laws 1997, and section 4, chapter 358, Oregon Laws
10 1999, and **section 8 of this 2001 Act.**

11 **SECTION 11. Section 8 of this 2001 Act and the amendments to ORS 314.752 and 318.031**
12 **by sections 9 and 10 of this 2001 Act apply to tax years beginning on or after January 1, 2002.**

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