

# House Bill 3446

Sponsored by Representatives C EDWARDS, CLEM; Representatives GREENLICK, HUNT, Senator WALKER

## 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**.

Allows taxpayer to elect to defer payment of increased property taxes attributable to annexation of property by city. Allows deferral for 10-year period after effective date of annexation. Requires payment of deferred property taxes if property is sold. Prescribes procedures for claiming deferral and collection of deferred taxes.

## A BILL FOR AN ACT

1  
2 Relating to annexation; creating new provisions; and amending ORS 311.701.

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

4 **SECTION 1. Sections 2 to 15 of this 2007 Act are added to and made a part of ORS**  
5 **chapter 311.**

6 **SECTION 2. As used in sections 2 to 15 of this 2007 Act:**

7 (1) "Annexation-related property tax increase" means the difference between the prop-  
8 erty taxes that are payable on property after a property is annexed by a city and the prop-  
9 erty taxes that would be payable on the property if the property had not been annexed.

10 (2) "Department" means the Department of Revenue.

11 (3) "Taxpayer" means an individual who has filed a claim for deferral under section 3 of  
12 this 2007 Act, or individuals who have jointly filed a claim for deferral under section 3 of this  
13 2007 Act.

14 (4) "Tax-deferred property" means the property upon which annexation-related property  
15 tax increases are deferred under sections 2 to 15 of this 2007 Act.

16 (5) "Taxes" or "property taxes" means ad valorem taxes, assessments, fees and charges  
17 entered on the assessment and tax roll.

18 **SECTION 3. (1) Subject to section 4 of this 2007 Act, an individual, or two or more indi-**  
19 **viduals jointly, may elect to defer annexation-related property tax increases for a property**  
20 **that has been annexed by a city. A deferral of annexation-related property tax increases**  
21 **under sections 2 to 15 of this 2007 Act may not be for a period of more than 10 years after**  
22 **the annexation occurs. A claim for deferral under this section must be filed with the county**  
23 **assessor not more than two years after the annexation of the property. A claim must be filed**  
24 **on or after January 1, and before April 15, of the year in which the deferral will first take**  
25 **effect.**

26 (2) The county assessor shall forward each claim filed under this subsection to the De-  
27 partment of Revenue which shall determine if the property is eligible for deferral.

28 (3) The filing of a claim under subsection (1) of this section:

29 (a) Defers the payment of the property taxes levied on the property for the fiscal year  
30 beginning on July 1 of the year.

**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 (b) Continues the deferral of the payment by the taxpayer of any future property taxes  
 2 until the expiration of 10 years from the effective date of the annexation, or for as long as  
 3 the provisions of section 4 of this 2007 Act are met, whichever comes first.

4 (4) A claim may not be filed under this section for a manufactured home or floating  
 5 structure.

6 **SECTION 4.** In order to qualify for tax deferral of annexation-related property tax in-  
 7 creases under sections 2 to 15 of this 2007 Act, the property must meet all of the following  
 8 requirements when the claim is filed and thereafter so long as the payment of taxes is de-  
 9 ferred:

10 (1) The person or persons claiming the deferral must own the fee simple estate or be  
 11 purchasing the fee simple estate under a recorded instrument of sale, or two or more per-  
 12 sons must together own or be purchasing the fee simple estate with rights of survivorship  
 13 under a recorded instrument of sale if all owners apply for the deferral jointly.

14 (2) There must be no prohibition to the deferral of property taxes contained in any pro-  
 15 vision of federal law, rule or regulation applicable to a mortgage, trust deed, land sale con-  
 16 tract or conditional sale contract for which the property is security.

17 **SECTION 5.** (1) A taxpayer's claim for deferral under sections 2 to 15 of this 2007 Act  
 18 must be in writing on a form supplied by the Department of Revenue and shall:

19 (a) Describe the property.

20 (b) Recite facts establishing the eligibility for the deferral under the provisions of  
 21 sections 2 to 15 of this 2007 Act.

22 (c) Have attached any documentary proof required by the department to show that the  
 23 requirements of sections 2 to 15 of this 2007 Act have been met.

24 (2) An applicant must attach to the claim a statement verified by a written declaration  
 25 of the applicant to the effect that the statements contained in the claim are true.

26 **SECTION 6.** (1) The Department of Revenue has a lien against property for which deferr-  
 27 al of taxes has been allowed under sections 2 to 15 of this 2007 Act. The lien shall be for the  
 28 payment of the deferred annexation-related property tax increases plus interest as provided  
 29 in section 7 of this 2007 Act, and any fees paid to the county clerk by the department in  
 30 connection with the recording, release or satisfaction of the lien. The lien for deferred taxes  
 31 attaches to the property on July 1 of the year in which the taxes were assessed. The deferred  
 32 property tax lien has the same priority as other real property tax liens except that the lien  
 33 of mortgages, trust deeds or security interests that are recorded or noted on any certificate  
 34 of title prior in time to the attachment of the lien for deferred taxes have priority over liens  
 35 for deferred taxes.

36 (2) A lien under this section may be foreclosed by the department as if the lien were a  
 37 purchase money mortgage under ORS chapter 88. The court may award reasonable attorney  
 38 fees to the department if the department prevails in a foreclosure action under this section.  
 39 The court may award reasonable attorney fees to a defendant who prevails in a foreclosure  
 40 action under this section if the court determines that the department had no objectively  
 41 reasonable basis for asserting the claim or no reasonable basis for appealing an adverse de-  
 42 cision of the trial court.

43 (3) Receipts from foreclosure proceedings shall be credited in the same manner as other  
 44 repayments of deferred property taxes under ORS 311.701.

45 **SECTION 7.** (1) If a taxpayer is eligible for deferral of annexation-related property tax

1 increases, the Department of Revenue shall notify the county assessor and the county  
 2 assessor shall show on the current ad valorem assessment and tax roll the property that is  
 3 subject to the deferral.

4 (2) When requested by the department, the tax collector shall send to the department the  
 5 tax statement for each tax-deferred property that reflects the amount of the annexation-  
 6 related property tax increases.

7 (3) A taxpayer who defers annexation-related property tax increases under sections 2 to  
 8 15 of this 2007 Act must pay interest on the amount of taxes paid to the county under this  
 9 section at the rate of six percent per year.

10 **SECTION 8.** (1) In each county in which there is tax-deferred property, the Department  
 11 of Revenue shall cause to be recorded in the mortgage records of the county, a list of tax-  
 12 deferred properties of that county. The list shall contain a description of the property as  
 13 listed on the assessment roll together with the name of the owner listed on the assessment  
 14 roll.

15 (2) The recording of the tax-deferred properties under subsection (1) of this section is  
 16 notice that the department claims a lien against those properties in the amount of the de-  
 17 ferred taxes plus interest together with any fees paid to the county clerk in connection with  
 18 the recording, release or satisfaction of the lien, even though the amount of taxes, interest  
 19 or fees is not listed.

20 (3) Notwithstanding the provisions of ORS 182.040 to 182.060 and 205.320 relating to the  
 21 time and manner of payment of fees to the county clerk, the department is not required to  
 22 pay any filing, indexing or recording fees to the county in connection with the recording,  
 23 release or satisfaction of liens against tax-deferred properties of that county in advance or  
 24 at the time entry is made. The manner of payment of the fees shall be as provided in ORS  
 25 205.395 for the payment of fees for recording and making entry of warrants or orders in the  
 26 County Clerk Lien Record.

27 **SECTION 9.** Upon determining the amount of annexation-related property tax increases  
 28 deferred in a county under sections 2 to 15 of this 2007 Act for the tax year, the Department  
 29 of Revenue shall pay to the respective county tax collectors an amount equivalent to the  
 30 deferred taxes less three percent thereof. Payment shall be made from the Property Tax  
 31 Deferral Revolving Account.

32 **SECTION 10.** (1) On or before December 15 of each year, the Department of Revenue  
 33 shall send a notice to each taxpayer who has claimed deferral of annexation-related property  
 34 tax increases under sections 2 to 15 of this 2007 Act for the current tax year. The notice  
 35 shall:

36 (a) Inform the taxpayer that the annexation-related property tax increases have or have  
 37 not been deferred in the current year.

38 (b) Show the total amount of deferred annexation-related property tax increases re-  
 39 maining unpaid since initial application for deferral and the interest on the deferred taxes  
 40 through November 15 of the current year.

41 (c) Inform the taxpayer that voluntary payment of the deferred annexation-related  
 42 property tax increases may be made at any time to the Department of Revenue.

43 (d) Contain any other information that the department considers necessary to facilitate  
 44 administration of the deferral program.

45 (2) The department shall give the notice required under subsection (1) of this section by

1 an unsealed postcard or other form of mail sent to the residence address of the taxpayer as  
 2 shown in the claim for deferral or as otherwise determined by the department to be the  
 3 correct address of the taxpayer.

4 **SECTION 11.** All deferred annexation-related property tax increases, including accrued  
 5 interest, become payable as provided in section 12 of this 2007 Act when:

6 (1) The property for which deferment of property taxes is claimed is sold, or a contract  
 7 to sell is entered into, or some person other than the taxpayer who claimed the deferment  
 8 becomes the owner of the property.

9 (2) Ten years expires from the effective date of the annexation.

10 **SECTION 12.** (1) Whenever any of the circumstances listed in section 11 of this 2007 Act  
 11 occurs:

12 (a) The deferral of taxes for the assessment year in which the circumstance occurs  
 13 continues for the assessment year; and

14 (b) The amounts of deferred annexation-related property tax increases, including accrued  
 15 interest, for all years are due and payable to the Department of Revenue August 15 of the  
 16 year following the calendar year in which the circumstance occurs.

17 (2) If the amounts due under this section are not paid when due, the amounts are delin-  
 18 quent as of that date and the property is subject to foreclosure.

19 **SECTION 13.** (1) All payments of annexation-related property tax increases deferred un-  
 20 der sections 2 to 15 of this 2007 Act shall be made to the Department of Revenue.

21 (2) Subject to subsection (3) of this section, all or part of the deferred taxes and accrued  
 22 interest may at any time be paid to the department by the taxpayer or the spouse of the  
 23 taxpayer.

24 (3) Any payment made under this section shall be applied first against accrued interest  
 25 and any remainder against the deferred taxes. The payment does not affect the deferred tax  
 26 status of the property.

27 (4) When the deferred annexation-related property tax increases and accrued interest are  
 28 paid in full and the property is no longer subject to deferral, the department shall prepare  
 29 and record in the county in which the property is located a satisfaction of the lien for the  
 30 deferred annexation-related property tax increases.

31 **SECTION 14.** If tax-deferred property is deeded to the county at the conclusion of a  
 32 foreclosure proceeding under ORS 312.200, the county court shall order the county treasurer  
 33 to pay to the Department of Revenue from the unsegregated tax collections account the  
 34 amount of deferred annexation-related property tax increases and interest owed by the tax-  
 35 payer.

36 **SECTION 15.** Sections 2 to 15 of this 2007 Act do not:

37 (1) Prevent the collection by foreclosure of property taxes that become a lien against  
 38 tax-deferred property.

39 (2) Defer payment of special assessments to benefited property which assessments do not  
 40 appear on the assessment and tax roll.

41 (3) Affect any provision of any mortgage or other instrument relating to land requiring  
 42 a person to pay property taxes.

43 **SECTION 16.** ORS 311.701 is amended to read:

44 311.701. (1) There is established in the State Treasury the [Senior] Property Tax Deferral Re-  
 45 volving Account to be used by the Department of Revenue for the purpose of making the payments

1 to:

2 (a) County tax collectors of property taxes deferred for tax years beginning on or after January  
3 1, 1983, as required by ORS 311.676 **and section 9 of this 2007 Act.**

4 (b) The appropriate local officer of special assessment improvement amounts deferred on or after  
5 October 15, 1983, as required by ORS 311.730.

6 (c) The department for its expenses in administering the property tax and special assessment  
7 senior deferral programs.

8 (2) The funds necessary to make payments under subsection (1) of this section shall be advanced  
9 to the department from time to time as necessary by the State Treasurer as an investment of the  
10 General Fund. The interest rate on the investment shall be as stated in ORS 311.674 (3) or 311.711  
11 (3). No funds shall be advanced under this subsection after June 30, 1985.

12 (3) The [Senior] Property Tax Deferral Revolving Account may include a reserve for payment  
13 of department administrative expenses.

14 (4) All sums of money received by the Department of Revenue under ORS 311.666 to 311.701 **or**  
15 **sections 2 to 15 of this 2007 Act** as repayments of deferred property taxes, or under ORS 311.702  
16 to 311.735 as repayments of deferred special assessment improvement amounts, including the interest  
17 accrued under ORS 311.674 (3), **section 7 of this 2007 Act** or 311.711 (3) shall, upon receipt, be  
18 credited to the revolving account and are continuously appropriated to the department after June  
19 30, 1985, for the purposes of subsection (1) of this section.

20 (5) After June 30, 1985, if there is not sufficient money in the revolving account to make the  
21 payments required by subsection (1) of this section, there is appropriated from the General Fund an  
22 amount sufficient which together with the money in the revolving account will provide an amount  
23 sufficient to make the required payments.

24 (6) When the department determines that moneys in sufficient amounts are available in the re-  
25 volving account, the department shall repay to the General Fund the amounts advanced as invest-  
26 ments under subsection (2) of this section and section 17, chapter 550, Oregon Laws 1983, plus  
27 accrued interest. The moneys used to repay the General Fund under this section shall not be con-  
28 sidered a budget item on which a limitation is otherwise fixed by law.

29 **SECTION 17.** ORS 311.701, as amended by section 4, chapter 749, Oregon Laws 2005, is  
30 amended to read:

31 311.701. (1) There is established in the State Treasury the [Senior] Property Tax Deferral Re-  
32 volving Account to be used by the Department of Revenue for the purpose of making the payments  
33 to:

34 (a) County tax collectors of property taxes deferred for tax years beginning on or after January  
35 1, 1983, as required by ORS 311.676 **and section 9 of this 2007 Act.**

36 (b) The appropriate local officer of special assessment improvement amounts deferred on or after  
37 October 15, 1983, as required by ORS 311.730.

38 (c) The department for its expenses in administering the property tax and special assessment  
39 senior deferral programs.

40 (2) The [Senior] Property Tax Deferral Revolving Account may include a reserve for payment  
41 of department administrative expenses.

42 (3) All sums of money received by the Department of Revenue under ORS 311.666 to 311.701 **or**  
43 **sections 2 to 15 of this 2007 Act** as repayments of deferred property taxes, or under ORS 311.702  
44 to 311.735 as repayments of deferred special assessment improvement amounts, including the interest  
45 accrued under ORS 311.674 (3), **section 7 of this 2007 Act** or 311.711 (3) shall, upon receipt, be

1 credited to the revolving account and are continuously appropriated to the department for the pur-  
2 poses of subsection (1) of this section.

3 (4) If there is not sufficient money in the revolving account to make the payments required by  
4 subsection (1) of this section, there is appropriated from the General Fund an amount sufficient  
5 which together with the money in the revolving account will provide an amount sufficient to make  
6 the required payments.

7 (5)(a) On November 30 of each year, if the amount in the revolving account exceeds the greater  
8 of 35 percent of the total amount needed to make the payments described in subsection (1) of this  
9 section for the previous property tax year or \$5 million, the department shall calculate the differ-  
10 ence between the amount in the revolving account and the greater of an amount that equals 35  
11 percent of the total amount needed to make the payments described in subsection (1) of this section  
12 for the previous property tax year or \$5 million.

13 (b) No later than February 1 of each year, the department shall transfer an amount equal to the  
14 difference described in paragraph (a) of this subsection into the Oregon Project Independence Fund  
15 established in ORS 410.422.

16 **SECTION 18. Sections 2 to 15 of this 2007 Act and the amendments to ORS 311.701 by**  
17 **sections 16 and 17 of this 2007 Act first apply to annexations that occur on or after the ef-**  
18 **fective date of this 2007 Act.**