

Enrolled Senate Bill 192

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for State Parks and Recreation Department)

CHAPTER

AN ACT

Relating to historic property tax incentives; creating new provisions; amending ORS 93.040, 358.475, 358.480, 358.487, 358.490, 358.495, 358.499, 358.505, 358.509, 358.511, 358.515, 358.525, 358.528, 358.540, 358.541, 358.543 and 358.545; repealing ORS 358.482, 358.526 and 358.535; and prescribing an effective date.

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

SECTION 1. ORS 358.475 is amended to read:

358.475. The Legislative Assembly hereby declares that it is in the best interest of the state to maintain, preserve and rehabilitate properties of Oregon historical significance. Historic preservation incentive programs provide a public benefit by encouraging preservation and appropriate rehabilitation of significant historic properties. These historically significant portions of the built environment contain the visual and intellectual record of our irreplaceable cultural heritage. They link us with our past traditions and values, establish standards and perspectives for measuring our present achievements and set goals for future accomplishments. To the extent that Oregon's historic preservation incentive programs encourage the preservation and appropriate rehabilitation of significant historical property, the programs create a positive partnership between the public good and private property that promotes economic development; tourism; energy and resource conservation; **sustainability**; neighborhood, downtown and rural revitalization; efficient use of public infrastructure; and civic pride in our shared historical and cultural foundations.

SECTION 2. ORS 358.480 is amended to read:

358.480. As used in ORS 358.480 to 358.545, unless the context requires otherwise:

(1) **"Americans with Disabilities Act"** means the **Americans with Disabilities Act of 1990 (P.L. 101-336), as amended.**

(2) **"Certify," "certified" and "certification" refer to the approval of historic property by the State Historic Preservation Officer for classification and special assessment under ORS 358.495.**

(3) **"Classified" and "classification" refer to the recognition of property by the State Historic Preservation Officer as historic property as defined in this section.**

(4) **"Commercial building" means improved property used in a trade or business or held for the production of income, not including residential rental property.**

(5) **"Condominium" means, with respect to property submitted to the provisions of ORS 100.005 to 100.625:**

(a) **The land, if any, whether fee simple, leasehold, easement or other interest or combination thereof, and whether contiguous or noncontiguous;**

(b) **Any buildings, improvements and structures on the property; and**

(c) **Any easements, rights and appurtenances belonging to the property.**

(6) **“Condominium unit” means a part of the property:**

(a) **That is described in ORS 100.020 (3);**

(b) **That is intended for any type of independent ownership; and**

(c) **The boundaries of which are described pursuant to ORS 100.105 (1)(d).**

(7) **“Condominium unit owner” means, except to the extent the declaration or bylaws provide otherwise, the person owning fee simple interest in a condominium unit, the holder of a vendee’s interest in a condominium unit under a recorded installment contract of sale or, in the case of a leasehold condominium, the holder of the leasehold estate in a condominium unit.**

(8) **“Contributing resource” means a building, site or structure that adds to the historic significance of a historic property or historic district.**

(9) **“Developer” means, with respect to a condominium, a declarant who records a declaration under ORS 100.100 or a supplemental declaration under ORS 100.110 or any person who purchases an interest in a condominium from a declarant, successor declarant or subsequent developer for the primary purpose of resale.**

[(1)] (10) **“Governing body” means the city or county legislative body having jurisdiction over the property [for which a limited assessment may be applied for under ORS 358.480 to 358.545] that is the subject of an application for historic property special assessment under ORS 358.487 to 358.543.**

[(2)] (11) **“Historic property” means real property that:**

(a) **Is currently listed, either individually or as a contributing resource, in the National Register of Historic Places established and maintained under the National Historic Preservation Act of 1966 (P.L. 89-665); [or, if the National Register of Historic Places ceases accepting nominations, that is approved for listing on an Oregon register of historic places;]**

[(b)] *Is open to the public for sight-seeing at least one day in each calendar year in accordance with rules adopted by the State Historic Preservation Officer; and]*

[(c)] *Meets the minimum standards of maintenance established by rule of the State Historic Preservation Officer.*

(b) **Is currently not a contributing resource in a listed national register district or property but that, in the opinion of the State Historic Preservation Officer, is eligible to become a contributing resource as a result of a proposed preservation plan; or**

(c) **Has been determined to be eligible for listing in the National Register of Historic Places by the State Historic Preservation Officer.**

(12) **“Historic rehabilitation standards” means the United States Secretary of the Interior’s Standards for Rehabilitation as in effect on the effective date of this 2009 Act.**

[(3)] (13) **“Maintenance” means action taken to mitigate wear and deterioration of a historic property without altering the historic character of the property, including action taken to protect and repair the condition of the property with the least possible impact on the historic character of the property.**

[(4)] (14) **“Owner” [includes] means a purchaser of real property under a recorded instrument of sale. In the case of multiple purchasers, “owner” may be a designee of the purchasers.**

[(5)] (15) **“Preservation”:**

(a) **Means the act or process of applying measures necessary to sustain the existing form, integrity and materials of [a] an historic property, including but not limited to the ongoing maintenance and repair of historic materials.**

(b) **Does not include the extensive replacement of historic materials or new construction.**

(16) **“Preservation plan” means a written document, photographs and drawings that outline the work of preservation, maintenance and rehabilitation proposed for completion**

while the property is receiving historic property special assessment or completed not more than 24 months before the date of application for historic property special assessment.

[(6)] (17) "Rehabilitation" means the process of repairing or altering a historic property in order to return the property to a state of utility in which an efficient contemporary use is possible, while preserving those portions and features of the property that are significant to the historic, architectural and cultural values of the property.

(18) "Seismic improvement" means construction or other measures that improve the seismic performance or structural stability of property or that reduce the potential for heavy structural damage to property or harm to people in or adjacent to the property in the event of an earthquake.

(19) "Sustainability" means, with respect to historic property, fulfilling present and future needs by using, without harming, renewable resources and unique human and environmental systems of a site, including air, water, land, energy, human ecology and other sustainable systems.

FIRST TERM APPLICATION

SECTION 3. ORS 358.487 is amended to read:

358.487. [(1)(a)] (1) An owner of historic property desiring classification and special assessment under ORS [358.480 to 358.545] **358.487 to 358.543** for the property [may make application for the classification and special assessment] **shall apply** to the State Historic Preservation Officer on forms approved by the [State Historic Preservation] officer.

(2) The [forms shall] **application must** include or be accompanied by:

(a) **A preservation plan as defined in ORS 358.480. The preservation plan must commit the applicant to expend, within the first five years for which historic property special assessment is granted, an amount not less than 10 percent of the historic property's real market value determined as of the assessment date for the first tax year to which the historic property special assessment applies. The focus of the preservation plan must be on exterior features, especially those visible from a public way, and structural members of the property. The treatment of significant interior features, as determined by the State Historic Preservation Officer, may also be included in the plan, but unless specifically required by the officer, work in bathrooms, kitchens, basements and attics is not included in the preservation plan. Work proposed in the plan must meet the historic rehabilitation standards.**

(b) **Payment of an application fee equal to:**

(A) **One-tenth of one percent of the assessed value of the property, as of the assessment date, for the year in which application is made; or**

(B) **For property that does not have an assessed value, one-tenth of one percent of the product of the real market value of the property for the tax year in which the application is made multiplied by the ratio of the average maximum assessed value over the average real market value for that tax year of property in the same area and property class.**

(c) **A copy of the property's current tax statement.**

(d) **Proof that the owner has property insurance on the property in an amount equal to the replacement value of the property.**

(e) The written consent of the owner to the viewing of the property by the State Historic Preservation Officer. [Any application made under this subsection shall include a preservation plan and be sent by the State Historic Preservation Officer to the appropriate county assessor, local landmark commission and governing body.]

(3) [An] **The application must be made [during the calendar year preceding the first property tax] before April 1 of the assessment year for which classification and special assessment as historic property [is] are desired.**

(4)(a) Property must be classified as historic property in order to be certified for historic property special assessment.

(b) Notwithstanding paragraph (a) of this subsection, property may be certified for historic property special assessment upon a determination of eligibility by the State Historic Preservation Officer under ORS 358.480 (11)(b) or (c). Property certified under this paragraph must become listed in the National Register of Historic Places within two years of certification under ORS 358.490.

[(b)] (5) Classification and special assessment pursuant to an application made under this [sub-section shall be] section are granted [only] for [15] 10 consecutive property tax years, [commencing] starting in the tax year beginning on [the] July 1 [following the calendar year in which the application was made] of the assessment year described in subsection (3) of this section.

[(2)(a) An owner may make preliminary application for classification of property as historic upon approval by the State Advisory Committee on Historic Preservation of the nomination of the property for listing on the National Register of Historic Places or, if the National Register of Historic Places ceases accepting nominations, the nomination of the property for listing on an Oregon register of historic places.]

[(b) The preliminary application shall be considered an application made or received for purposes of subsection (1) of this section if, by September 15 of the year for which classification and special assessment are first sought, the property is:]

[(A) Listed in the National Register of Historic Places; or]

[(B) If the National Register of Historic Places ceases accepting nominations, approved for listing on an Oregon register of historic places.]

[(c) If the requirements of paragraph (b) of this subsection are not satisfied, the preliminary application may not be considered an application made for purposes of subsection (1) of this section until the calendar year in which, as of September 15, the property is listed as described in paragraph (b) of this subsection.]

[(3) Immediately upon receipt of a copy of the application under subsection (1) of this section, the county assessor shall review the application for accuracy and completeness of description and other matters within the expertise of the county assessor and shall make recommendations regarding the classification to the State Historic Preservation Officer.]

[(4)(a) Immediately upon receipt of a copy of the application under subsection (1) of this section, the governing body shall review the application for matters relating to public benefit and shall make recommendations regarding the classification to the State Historic Preservation Officer.]

[(b) A governing body may exclude certain districts or properties from participation in the special assessment program under criteria established by the governing body. In adopting criteria, the governing body shall consider whether a district is in economic distress and the value of the property in the district.]

[(5) By making application for classification and assessment under this section, the owner consents that the State Historic Preservation Officer has access to the property for inspection at reasonable times to ensure that the terms of the national register or other federal or state laws or requirements are being met.]

[(6) The application for classification and assessment under ORS 358.480 to 358.545 may not be processed unless accompanied by a nonrefundable fee of one-third of one percent of the real market value of the property, as of the assessment date, for the year in which application is made.]

(6) The application fee required under subsection (2) of this section shall be deposited in the State Parks and Recreation Department Fund for use by the State Parks and Recreation Director or for transfer to the Oregon Property Management Account established under ORS 358.680 to 358.690, upon the advice of the State Advisory Committee on Historic Preservation. The application fee becomes nonrefundable after certification as described in ORS 358.495.

FIRST TERM CERTIFICATION; NOTICE

SECTION 4. ORS 358.490 is amended to read:

358.490. (1)(a) After an application is *[filed]* **submitted** under ORS 358.487, the State Historic Preservation Officer shall **first** review the application **to determine whether the application meets the requirements of ORS 358.487** and may view the premises.

(b) **If the officer determines that the application does not meet the requirements of ORS 358.487, the officer shall return the application with an explanation for the nonacceptance.**

(c) *[After determining]* **If the officer determines** that the application is complete, *[the State Historic Preservation Officer shall approve, approve with conditions or deny the application. The State Historic Preservation Officer may not disapprove the application solely because of the potential loss of revenue that may result from granting the application.]* **the officer shall mail or otherwise transmit copies of the application to the appropriate county assessor, local landmark commission and governing body.**

(2) **Within 30 days from the date the State Historic Preservation Officer transmits the copy of the application under subsection (1) of this section, the county assessor shall review the application for accuracy and completeness of description and other matters within the expertise of the county assessor, and shall make recommendations regarding the validity and appropriateness of the application to the officer.**

(3) **Within 30 days from the date the State Historic Preservation Officer transmits the copy of the application under subsection (1) of this section, the governing body shall review the application for matters relating to public benefit and shall make recommendations regarding the classification to the officer.**

[(2)] (4) During the review process of each application, the State Historic Preservation Officer shall consider the county assessor's and governing body's recommendations submitted under *[ORS 358.487 (3) and (4)]* **subsections (2) and (3) of this section.**

(5)(a) **After receiving recommendations from the county assessor and governing body under subsections (2) and (3) of this section, the State Historic Preservation Officer shall approve or deny the application or approve the application with conditions.**

[(3)] (b) The *[State Historic Preservation]* officer may approve the application with respect to only part of the property that is the subject of the application. However, if any part of the application is denied, the applicant may withdraw the application.

(c) **The officer may not disapprove the application solely because of the potential loss of revenue that might result from granting the application.**

(6) **Property classified as historic property under ORS 358.487 to 358.543 is entitled to any other exemption or special assessment provided by law.**

[(4)] (7) A preservation plan that has been approved by the State Historic Preservation Officer may be amended from time to time, either at the request of the owner or at the request of the State Historic Preservation Officer. The amendments may be approved, approved in part or disapproved by the State Historic Preservation Officer. To the extent the amendments are approved, amendments shall become part of the preservation plan that must be carried out in order that the property not be disqualified as historic property.

SECTION 5. ORS 358.495 is amended to read:

358.495. (1)(a) Immediately following approval or disapproval of an application under ORS 358.490, the State Historic Preservation Officer shall notify the county assessor, the governing body and the applicant *[which shall in no event be]* **of the decision in writing not** later than *[September 15]* **July 1** of the tax year for which classification and special assessment are first desired. *[In no event later than September 15 of the year for which classification and special assessment are desired, the State Historic Preservation Officer shall cause a copy of the preservation plan approved under ORS 358.490 to be delivered or mailed to the county assessor and the governing body.]*

(b) An application not denied on or before *[September 15 shall be]* **July 1 pursuant to paragraph (a) of this subsection** is deemed approved, and the property that is the subject of the application *[shall be considered to be]* **is** historic property that qualifies under ORS *[358.480 to 358.545]* **358.487 to 358.543.**

(2) If the State Historic Preservation Officer determines that the historic property qualifies under ORS [358.480 to 358.545] **358.487 to 358.543**, the [State Historic Preservation] officer shall, **not later than July 1 of the tax year for which the property is first certified for historic property special assessment:**

(a) **Notify the local landmark commission that the property is certified.**

(b) Certify [that fact] **the property's qualification** in writing and [shall] file a copy of the certificate with the county assessor and the governing body. The certificate shall state the facts [upon which the approval was based] and list any condition on which **the** approval is based.

(c) **Record a notice with the county clerk in the county in which the certified historic property is located stating that the property is certified for historic property special assessment.**

(d) **Provide the owner of the property with a plaque. The owner shall install the plaque on the property in a location that is visible from a public right of way.**

(3) The county assessor[, *as to any historic property,*] shall assess **historic property certified under this section** on the basis provided in ORS 358.505, and each year the historic property is classified and [so] assessed **under ORS 358.505** shall [also] enter on the assessment and tax roll that the property is being specially assessed as historic property and is subject to potential additional taxes as provided in ORS 358.525 by adding the notation "historic property (potential additional tax)."

[3] (4) If the State Historic Preservation Officer determines that the property does not qualify for classification and assessment under ORS [358.480 to 358.545] **358.487 to 358.543**, the State Historic Preservation Officer shall give written notice of the denial to the applicant. The notice shall state the reasons for the denial.

[(4)(a)] (5)(a) Any owner, governing body or county assessor affected by a determination of the State Historic Preservation Officer made under ORS [358.480 to 358.545] **358.487 to 358.543** may request [a contested case hearing according to the provisions of ORS chapter 183.] **review of the determination:**

(A) **Pursuant to an appeal process established by the local governing body, if any; or**

(B) **By the Historic Assessment Review Committee.**

[(b) After a contested case hearing has been held, the administrative law judge shall present the proposed order to the Historic Assessment Review Committee. The review committee shall determine the final order in the case.]

(b) **After the review described in paragraph (a) of this subsection, any party may request a contested case hearing of the decision according to the provisions of ORS chapter 183. The administrative law judge presiding at the contested case hearing shall determine the final order in the case.**

FIRST TERM REPORTING

SECTION 6. Section 7 of this 2009 Act is added to and made a part of ORS 358.487 to 358.543.

SECTION 7. (1) The owner of property certified for special assessment as historic property under ORS 358.490 shall submit written progress reports concerning the preservation plan to the State Historic Preservation Officer in a form prescribed by the officer on or before December 31 of the third, sixth and ninth years of the historic property special assessment period under ORS 358.487 to 358.543.

(2) In addition to the reports required under subsection (1) of this section, at the end of the first five years for which historic property special assessment is granted, the owner shall submit a report demonstrating compliance with the expenditure commitment under the preservation plan as described in ORS 358.487 (2)(a).

(3)(a) The State Historic Preservation Officer is at all times authorized to demand and receive reports from owners of property classified and specially assessed as historic property under ORS 358.487 to 358.543 as to the continued qualification of the property for historic property classification and special assessment. The content of reports and times for reporting under this subsection shall be determined by the officer. If the owner fails, after 30 days' written notice by mail, return receipt requested, to comply with the officer's demand, the officer shall immediately notify the assessor and the assessor shall withdraw the property from special assessment and apply the penalties provided by ORS 358.525.

(b) The State Historic Preservation Officer may conduct on-site inspections of historic property granted special assessment, with or without cause, upon 30 days' notice.

(4)(a) Before starting any work that is described in a preservation plan or that affects historic features of property certified as historic property pursuant to this chapter, the owner of the property must apply for and receive written approval:

(A) From the local governing body if:

(i) The governing body has a historic preservation ordinance and review process that has been approved by the State Historic Preservation Officer and under which the historic property is already regulated;

(ii) The proposed work requires historic review by the governing body's historic preservation ordinance and review process; and

(iii) The governing body has not requested that approval of work pursuant to this section be handled by the State Historic Preservation Officer; or

(B) If the conditions in subparagraph (A) of this paragraph have not been met, from the State Historic Preservation Officer.

(b) All work must meet the historic rehabilitation standards.

(5) If the governing body's approval is required under subsection (4) of this section, the governing body shall notify the State Historic Preservation Officer of the proposed work. The governing body shall allow the officer at least 14 days to comment on the proposed work before making a decision on the application.

ALL TERMS BENEFIT COMPUTATION

SECTION 8. ORS 358.505 is amended to read:

358.505. (1)(a) **Except as provided in paragraphs (b) and (c) of this subsection, for property certified for special assessment as historic property under ORS 358.490,** the county assessor shall, *for the 15* **for 10** consecutive tax years *[elected under ORS 358.480 to 358.545,]* list on the assessment and tax roll a specially assessed value *[for property classified as historic property]* that equals the assessed value of the property at the time application *[for classification]* was made **under ORS 358.487.**

(b) *[Notwithstanding paragraph (a) of this subsection,]* If the property *[that is the subject of the application]* **certified for special assessment as historic property** was exempt or specially assessed at the time the application *[for classification]* was made, the county assessor shall, *for the 15* **for 10** consecutive tax years *[elected under ORS 358.480 to 358.545,]* list on the assessment and tax roll a specially assessed value *[for the property]* that equals the product of the real market value of the property for the tax year in which the application was made multiplied by the ratio of the average maximum assessed value over the average real market value for that tax year of property in the same area and property class.

(c) **If the property certified for special assessment as historic property is a condominium unit being assessed upon initial sale by the developer, the county assessor shall for the tax years of the remaining term of historic property special assessment list on the assessment and tax roll a specially assessed value that equals the product of the real market value of the property for the tax year in which the initial sale took place multiplied by the ratio of**

the average maximum assessed value over the average real market value for that tax year of property in the same area and property class.

[(c)] (d) [If a reapplication for classification and special assessment filed pursuant to ORS 358.540 (3) is approved under ORS 358.490] For property certified under ORS 358.490 for a second term of special assessment as historic property under ORS 358.540, the county assessor shall, for [15] 10 consecutive tax years after the date of the filing of the [reapplication,] application under ORS 358.487 for the second term, list on the assessment and tax roll a specially assessed value [for the property that was the subject of the reapplication] that equals [the product of] the real market value of the property for the assessment year in which the [reapplication] application is made [multiplied by the ratio of the average maximum assessed value over the average real market value for the assessment year of property in the same area and property class].

(2)(a) Notwithstanding ORS 308.149 (2), for the first tax year of [a 15-year] an initial or second 10-year period of historic property special assessment, [notwithstanding ORS 308.149 (2),] the maximum assessed value of property subject to historic property special assessment shall equal the specially assessed value of the property under subsection (1) of this section multiplied by the ratio, not greater than 1.00, of the maximum assessed value the property would have had if the property were not specially assessed over the real market value of the property.

(b) For each tax year after the first tax year [in] during which the property is subject to special assessment as historic property [and before the conclusion of the 15-year period of historic property special assessment], the property's maximum assessed value [subject to special assessment shall equal] equals 103 percent of the property's assessed value from the prior year or 100 percent of the property's maximum assessed value [subject to special assessment] from the prior year, whichever is greater.

(3) The assessed value of property that is classified as historic property for the tax year shall equal the lesser of:

(a) The property's specially assessed value as determined under subsection (1) of this section; [or]

(b) The property's maximum assessed value as determined under subsection (2) of this section[.]; or

(c) The property's real market value as of the assessment date for the tax year.

(4) [Except as provided under ORS 358.487 (2),] The entitlement of property to the special assessment provisions of this section shall be determined as of July 1. If the property becomes disqualified on or after July 1, its assessment for that year shall continue as provided in this section.

(5) Assessed value, as defined and determined under ORS 308.146, shall be determined for property classified as historic property by the county assessor each year. The assessed value so determined for any year shall be subject to appeal to the county board of property tax appeals within the time and in the manner provided in ORS chapter 309 and shall be subject to appeal thereafter to the Oregon Tax Court and to the Oregon Supreme Court within the time and in the manner provided for appeals of value determination for purposes of ad valorem property taxation.

[(6) The Department of Revenue, in consultation with the State Historic Preservation Officer, shall adopt rules within its area of expertise that are necessary to the implementation of ORS 358.480 to 358.545.]

FIRST TERM DISQUALIFICATION

SECTION 9. ORS 358.515 is amended to read:

358.515. (1) When property has once been classified and assessed as historic property pursuant to application filed under ORS [358.480 to 358.545] **358.487**, it [shall remain so] **remains** classified and [be] **is** granted the special assessment provided by ORS 358.505 until [the property] **it** becomes disqualified for [such] classification and **special** assessment by:

[(a) Written notice by the taxpayer to the assessor to remove the special assessment.]

(a) Expiration of an initial or second 10-year period of special assessment.

(b) Sale or transfer to *[an ownership making it]* a governmental or nonprofit entity that is exempt from property taxation.

[(c) Removal of the special assessment by the assessor upon discovery that the property no longer qualifies as historic property because it is not in compliance with the preservation plan applicable to the property or for other reason.]

[(d) In the case of residential property, any other sale or transfer of the property.]

[(2)(a) Notwithstanding subsection (1)(d) of this section, the sale or transfer to a new owner or transfer by reason of death of a former owner to a new owner does not operate to disqualify the property from the special assessment provided by ORS 358.505 so long as the property continues to qualify as historic property and the new owner expressly assents to the preservation plan in effect for the property and continues to implement the preservation plan.]

[(b) The new owner shall notify the State Historic Preservation Officer of the sale or transfer of ownership within 60 days after the date that the documents described in ORS 93.040 are recorded.]

(c) The destruction or substantial alteration of the property by acts of nature or other events for which the owner is not responsible.

(d) Initial sale of a condominium as provided in ORS 358.543 (3)(b).

(e) Written notice by the taxpayer to the assessor to remove the special assessment.

(f) The owner's failure to maintain, preserve or rehabilitate the property or to comply with the expenditure commitment in accordance with the preservation plan or the historic rehabilitation standards.

(g) The owner's failure to submit required reports.

(h) Failure of the property to be listed in the National Register of Historic Places either individually or as a contributing resource in a listed historic district or property within two years of certification as required under ORS 358.487 (4)(b).

(i) The owner's failure to obtain, or the lapse of, the property insurance required under ORS 358.487 (2)(d).

(j) The owner's demolition of the property.

(k) The owner's substantial alteration of the property in a way that does not meet the historic rehabilitation standards.

*[(3) (2)(a) When, for any reason, the property or any portion *[thereof]* ceases to qualify as historic property, the owner at the time of change shall notify the assessor and the State Historic Preservation Officer of the change prior to the next January 1 assessment date.*

(b) The officer makes final determinations of whether historic property is disqualified for special assessment under ORS 358.487 to 358.543.

(3) Except as provided by subsection (1)(a) of this section, disqualification does not constitute completion of a 10-year period of special assessment certified under ORS 358.490 or preclude a property's future special assessment under ORS 358.487 to 358.543.

(4) The State Historic Preservation Officer shall notify the owner in writing before July 1 of the 10th and final year for which property is certified for special assessment under ORS 358.490 that the special assessment is due to expire and shall outline the options available to the owner upon disqualification upon expiration of an initial or second 10-year period of special assessment, as applicable.

(5) Upon expiration of an initial or second 10-year period of special assessment, the State Historic Preservation Officer shall notify the owner, the governing body and the county assessor that the term has expired.

**FIRST TERM
PENALTY**

SECTION 10. ORS 358.525 is amended to read:

358.525. (1) Except as provided in subsection (4) of this section, whenever property that has received special assessment as historic property under ORS [358.480 to 358.545 thereafter] **358.487 to 358.543** becomes disqualified for [such] assessment as provided in ORS 358.515, there [shall be] is added to the tax extended against the property on the next general property tax roll, to be collected and distributed in the same manner as the remainder of real property tax[,];

(a) Additional taxes equal to the difference between the taxes assessed against the property and the taxes that would otherwise have been assessed against the property for each of the last [15] 10 years (or [such] a lesser number of years[,]) corresponding to the years of assessment as historic property applicable to the property) as of January 1 of the assessment year for which the property was disqualified for special assessment;

(b) [Plus] An amount equal to the sum of the interest on each year's additional taxes computed under ORS 311.505 from November 15 of the tax year for which back taxes are being added to July 1 of the tax year of disqualification; **and**

(c) A penalty in the amount of 15 percent of the amount computed under paragraph (a) of this subsection.

(2) Whenever property that has received special assessment as historic property under ORS 358.505 becomes disqualified for [such] assessment and [either] **the** notice required by ORS 358.515 [(3)] **(2)** is not given, the assessor shall determine the date that the notice should have been given, shall notify the owner thereof and, notwithstanding ORS 311.235, there shall be added to the tax extended against the property on the next general property tax roll, to be collected and distributed in the same manner as the remainder of the real property tax, in full payment of all taxes and penalties accruing from the disqualification, the sum of the following:

(a) Additional taxes equal to the difference between the total amount of taxes that would have been due on the property for each year, not to exceed the last [15] 10 years, in which special assessment under ORS 358.505 was in effect for the property (even though erroneously) and the taxes that would have been due had special assessment not been in effect;

(b) [Plus] An amount equal to the sum of the interest on each year's additional taxes computed under ORS 311.505 from November 15 of the tax year for which additional taxes are being added to July 1 of the tax year of disqualification[, plus]; **and**

[(b)] **(c)** An additional penalty of 15 percent of the amount in paragraph (a) of this subsection.

(3) Prior to adding to the tax extended against the property on the next general property tax roll [of] any additional [taxes or penalty] **amount** imposed by subsection (1) or (2) of this section, in the case of disqualification pursuant to ORS 358.515 [(1)(c)] **(1)(f) to (k)**, the assessor shall notify the owner of the property by mail, return receipt requested, of the disqualification.

(4) Additional tax or penalty may not be imposed under subsection (1) or (2) of this section [upon the sale or transfer to an ownership making it exempt from property taxation. Additional tax or penalty may not be imposed under subsection (1) or (2) of this section if the historic property is destroyed by fire or act of God.] **in the case of property disqualified pursuant to:**

(a) ORS 358.515 (1)(a), (b), (c) or (d); or

(b) ORS 358.515 (1)(e) if the written notice is accompanied by proof that the owner has complied with the expenditure commitment under the preservation plan as described in ORS 358.487 (2)(a).

(5) The amount determined to be due under subsection (1) or (2) of this section may be paid to the tax collector prior to the completion of the next general property tax roll, pursuant to ORS 311.370.

(6) Additional taxes collected under this section shall be deemed to have been imposed in the year to which the additional taxes relate.

SECOND TERM

SECTION 11. ORS 358.540 is amended to read:

358.540. (1) Property classified as historic property under ORS [358.480 to 358.545] **358.487 to 358.543** is entitled to any other exemption or special assessment provided by law.

(2) Property that has **been certified for special assessment under ORS 358.490 and** received special assessment under ORS [358.480 to 358.545 for 15 years,] **358.505 for 10 years,** at the completion of the [15-year] **10-year** term, is disqualified from historic property special assessment.

(3)(a) Notwithstanding subsection (2) of this section, following completion of the initial [15-year] **10-year** period of historic property classification and disqualification under subsection (2) of this section, the owner of property classified as historic property may reapply under ORS 358.487 for one additional [15-year] **10-year** period of special assessment under ORS [358.480 to 358.545] **358.487 to 358.543**.

(b) Following completion of the second [15-year] **10-year** term of special assessment, the historic property [shall be] **is** disqualified from historic property special assessment and is not again eligible for special assessment under ORS [358.480 to 358.545] **358.487 to 358.543**.

[*(b)*] (4) [*For commercial property, a reapplication*] **An application** filed under [*this*] subsection (3) of this section[, *in addition to containing all of the information required of an application filed*] **must be filed in the manner provided** under ORS 358.487[, *shall*] **and** be accompanied by a [*renovation*] **preservation** plan detailing [*measures to be taken for purposes of*]:

(a) **Improvements to the historic property that:**

(A) **Promote compliance with the** Americans with Disabilities Act [*compliance,*];

(B) **Will result in** seismic improvement [*measures or*]; **or**

(C) **Will result in improvements in** energy conservation [*measures,*] **or sustainability;**

(b) The costs associated with the [*measures*] **improvements, which costs are in an amount not less than 10 percent of the historic property's real market value determined as of the date of the application filed under subsection (3) of this section;** and

(c) A schedule of the dates on which work on the [*measures*] **improvements** will be begun and completed.

[*(c)*] (5)(a) [*For commercial property, a reapplication*] **An application** filed under [*this*] subsection (3) of this section [*that in other respects is in compliance with the application requirements of ORS 358.487*] may be approved only upon a finding by the State Historic Preservation Officer that the [*renovation*] **preservation** plan submitted with the [*reapplication*] **application pursuant to subsection (4) of this section** will, if implemented, result in a significant investment in the historic property that promotes compliance with Americans with Disabilities Act [*requirements*] or that results in seismic improvements or **improvements in** energy conservation [*improvements*] **or sustainability** to the property. [*If approved, the renovation plan shall be considered an amendment to and part of the preservation plan filed with the reapplication and in effect for the property.*]

[*(d)*] (b) For residential [*or commercial*] property, [*a reapplication*] **an application** filed under [*this*] subsection (3) of this section that [*in other respects*] is **otherwise** in compliance with the application requirements [*of ORS 358.487*] may be approved only if a second term of historic property classification and special assessment [*for residential or commercial property is authorized*] **is not prohibited** under ORS 358.541.

[*(e)*] *The State Historic Preservation Officer may adopt rules under this subsection, including rules that provide:*

[*(A)*] *The minimum amount of investment that must be made in order for the investment to be considered a significant investment.*

[*(B)*] *The minimum amount of seismic improvement to the property that must be contemplated in the renovation plan in order for the plan to be approved.*

[*(C)*] *The minimum level of energy conservation improvements that must be contemplated in the renovation plan in order for the plan to be approved.*

[*(D)*] *The maximum amount of time between the date of filing of the reapplication and the date of completion of the measures described in the renovation plan in order for the renovation plan to be approved.*

(6) An application for a second 10-year period of special assessment as historical property shall be certified in accordance with ORS 358.490.

(7) A determination under ORS 358.490 with respect to an application for a second 10-year period of special assessment as historical property is subject to the notice, certification and filing requirements and review rights described in ORS 358.495.

(8) The owner of property certified for a second 10-year period of special assessment under this section is subject to the reporting requirements under section 7 of this 2009 Act.

(9) Property certified for a second 10-year period of special assessment under this section is subject to penalties upon disqualification as provided by ORS 358.525.

SECTION 12. ORS 358.541 is amended to read:

358.541. (1) Residential [*or commercial*] property may not qualify for a second term of classification and special assessment as historic property under this section [*unless*]:

(a) If the property is located within a city, the governing body of [*the city*] **which** has adopted a resolution or ordinance [*authorizing*] **prohibiting** a second term of historic property classification and special assessment for residential [*or commercial*] property; or

(b) If the property is located within unincorporated territory of a county, the governing body of [*the county*] **which** has adopted a resolution or ordinance [*authorizing*] **prohibiting** a second term of historic property classification and special assessment for residential [*or commercial*] property.

(2) The city or county [*authorizing*] **prohibiting** a second term of historic property classification and special assessment for residential [*or commercial*] property shall send a copy of the [*authorizing*] **prohibiting** resolution or ordinance to the State Historic Preservation Officer.

MISCELLANEOUS

SECTION 13. ORS 358.543 is amended to read:

358.543. [(1) *Any additions made that are historically accurate reconstructions of once extant features or necessary for safety or access for persons with disabilities or required by building code requirements may be classified as not being "new construction" by the State Historic Preservation Officer if the State Historic Preservation Officer so determines after request is made by the owner.*]

[(2) *A request to have an addition classified as not being "new construction" must be made in writing and must be accompanied by written documentation that demonstrates that the addition is a historically accurate reconstruction of once extant features, necessary for safety or access for persons with disabilities or required by building code requirements.*]

[(3) *Except as provided in subsection (4) of this section, if new construction takes place with respect to property classified as historic property under ORS 358.480 to 358.545, the new construction may not be considered classified as historic and may not receive the special valuation accorded historic property under ORS 358.505. The new construction shall be valued for ad valorem property tax purposes at its real market value and shall be assessed as provided in ORS 308.146 (1) to (3).*]

[(4)(a) *If new construction takes place on or after January 1, 2002, with respect to historic property for which a certificate has been filed under ORS 358.495 (2), the new construction shall be subject to the maximum assessed value and assessed value of the historic property under ORS 358.505 if the new construction is approved by the State Historic Preservation Officer and:*]

[(A) *Is used primarily for residential purposes; or*]

[(B) *Is used primarily for nonresidential purposes. New construction that is used primarily for nonresidential purposes shall be subject to the maximum assessed value and assessed value of the historic property under ORS 358.505 only to the extent the square footage of the new construction, when added to the total net rentable area of the existing historic property, is less than or equal to the total net rentable area of the property that existed prior to the new construction.*]

[(b) *New construction that is not approved for historic property assessment under paragraph (a) of this subsection shall be assessed as provided in ORS 308.146 (1) to (3).*]

[(c) *The State Historic Preservation Officer may adopt rules establishing procedures for requesting and obtaining the approval of the State Historic Preservation Officer under this subsection.*]

[(d) For purposes of this subsection, net rentable area shall be measured in square feet.]

[(5) Any notice required under ORS 358.528 to be sent by a public official or agency with regard to a change in classification to or from historic property classification shall be given by the county assessor and to the State Historic Preservation Officer.]

[(6) As used in this section, "new construction" includes, but is not limited to:]

[(a) An additional new building, structure or other improvement outside the building envelope, including but not limited to a parking area to be or in use for commercial purposes.]

[(b) An enlargement of the exterior perimeters of an existing building, structure or improvement.]

[(c) Any story or stories added to an existing building, structure or improvement.]

(1)(a) The value of new construction or additions to historic properties certified for special assessment under ORS 358.487 to 358.543 is assessed in the same manner as the original historic property under ORS 358.505 if the additions or new construction:

(A) Were included in the preservation plan approved pursuant to ORS 358.540; and

(B) Meet the historic rehabilitation standards as defined in ORS 358.480.

(b) Notwithstanding paragraph (a) of this subsection, additions or new construction are not assessed under ORS 358.505 if the local governing body or the State Historic Preservation Officer, in accordance with section 7 (4) of this 2009 Act, determines that the additions or improvements are:

(A) Sited on the property in a manner more suitable for primary historic buildings in the area;

(B) Of a size or scale more appropriate to primary historic buildings in the area; or

(C) Independent structures as determined by use or ownership.

(c) If additions or new construction described in paragraph (b) are disqualified for any reason listed in ORS 358.515 (1), the entire property may be disqualified for historic property special assessment.

(2)(a) Buildings divided into condominiums are eligible for special assessment as historic property under ORS 358.505 only in their entirety on the basis of one application pursuant to ORS 358.487.

(b) No individual condominium unit owner may opt out at the time of certification pursuant to this chapter or seek disqualification once the building has been certified. At the time application is made, a letter to this effect must be delivered to each condominium unit owner.

(3)(a) When a building that is certified as historic property is divided into condominium units, the assessor shall calculate the specially assessed value of the entire building pursuant to ORS 358.505 (1)(a) or (b), as applicable.

(b) Initial sale of a condominium unit by the developer disqualifies the unit within the meaning of section 11 (1)(c)(E), Article XI of the Oregon Constitution.

(c) Upon disqualification due to initial sale, the condominium unit is requalified without further application for the remaining term of the current 10-year period of historic property special assessment.

(d) Upon requalification after initial sale, the assessor shall calculate the specially assessed value of the condominium unit pursuant to ORS 358.505 (1)(c).

(e) Upon sale of individual condominium units, a notice of the building's classification and special assessment as historic property in its entirety must be attached to each deed. Recording fees for all condominium units must be paid by the condominium association.

(4) If the building qualifies for a second 10-year period under ORS 358.540, each condominium unit is separately assessed pursuant to the applicable provisions of ORS 358.505.

SECTION 14. ORS 358.509 is amended to read:

358.509. If the county assessor, local landmark commission or governing body has reason to believe that property classified as historic property is not being maintained, rehabilitated or preserved as required under the preservation plan approved for the property, as amended, or as required under rules established by the **Department of Revenue or the State Historic Preservation Officer**, or

otherwise no longer qualifies for classification and special assessment as historic property, the county assessor, local landmark commission or governing body shall request the State Historic Preservation Officer to determine if the property continues to qualify. The request shall be in writing and state the reasons why the continuing qualification is questioned. Upon receipt of the request, the State Historic Preservation Officer may initiate a continuing qualification review. If a review is initiated, the State Historic Preservation Officer or designee of the officer shall inspect the property and may take whatever steps are necessary to determine if the property continues to qualify for special assessment [including a request for a report under ORS 358.535]. The State Historic Preservation Officer shall notify the county assessor of the determination made pursuant to the request within 60 days after the request is received. [A determination by the State Historic Preservation Officer that the property no longer qualifies shall constitute a discovery described in ORS 358.515 (1)(c).]

SECTION 15. ORS 358.511 is amended to read:

358.511. (1) There is established an Historic Assessment Review Committee consisting of [three] **five** members appointed by the Governor.

(2) The term of office of each member is four years, but a member serves at the pleasure of the Governor. A member is eligible for reappointment. A member whose term has expired shall continue to serve until a successor has been appointed.

(3) Appointments to the review committee shall be based on representation of interests of the county assessors, **the historic preservation [interests] community, the State Advisory Committee on Historic Preservation, the development community** and local government.

(4) A majority of the members of the review committee constitutes a quorum for the transaction of business.

SECTION 16. ORS 358.528 is amended to read:

358.528. When any property has been classified and **specially** assessed as historic property under ORS [358.480 to 358.545] **358.487 to 358.543** and the owner or other qualified person applies for a change in the classification under another special assessment program, the applicant shall have 30 days thereafter within which to withdraw the application, by giving written notice to the public official or agency to whom the applicant applied for the change in classification. If no notice of withdrawal is given by the applicant, the application shall be acted upon and the change in classification made, as otherwise provided by law.

SECTION 17. ORS 358.545 is amended to read:

358.545. The **Director of the Department of Revenue and the State Historic Preservation Officer shall adopt rules within their areas of expertise as necessary to carry out the purposes of special assessment under ORS 358.487 to 358.543.** [, pursuant to ORS chapter 183, with regard to the determination of entitlement of historic properties to the special assessment accorded by ORS 358.480 to 358.545. The rules shall:]

[1] *Encompass requirements for allowance and substantiation of public sight-seeing of historic property classified under ORS 358.480 to 358.545;*

[2] *Provide minimum maintenance and preservation standards for the property;*

[3] *Provide standards and guidelines for rehabilitation based on those adopted by the United States Secretary of the Interior;*

[4] *Delineate any other matters necessary to carry out the purposes of ORS 358.480 to 358.545; and]*

[5] *Provide for a review procedure by the State Historic Preservation Officer for compliance with the preservation plan in the 5th, 10th and 14th years of special assessment. If the State Historic Preservation Officer determines that there is lack of compliance with the preservation plan, the State Historic Preservation Officer shall either notify the county assessor under ORS 358.509 or request that the preservation plan be amended as provided under ORS 358.490. If, after a request for amendment is made, the property remains in noncompliance, the State Historic Preservation Officer shall notify the county assessor as described, and with the result described, under ORS 358.509.]*

SECTION 18. ORS 358.499 is amended to read:

358.499. (1) Property first classified and specially assessed as historic property for a tax year beginning on or before July 1, 1994, shall continue to be so classified, specially assessed and removed from special assessment as provided under ORS [358.480 to 358.545] **358.487 to 358.543** as those sections were in existence and in effect on December 31, 1992.

(2) Property may be classified and specially assessed under ORS [358.480 to 358.545] **358.487 to 358.543** pursuant to application filed under ORS 358.487 on or after September 9, 1995, and first applicable for the tax year 1996-1997 or any tax year thereafter.

(3) Property may not be classified and specially assessed pursuant to application filed under ORS 358.487 **or 358.540** if the application is filed on or after July 1, [2010] **2020**.

SECTION 19. ORS 93.040 is amended to read:

93.040. (1) The following statement shall be included in the body of an instrument transferring or contracting to transfer fee title to real property except for owner's sale agreements or earnest money receipts, or both, as provided in subsection (2) of this section: "BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007."

(2) In all owner's sale agreements and earnest money receipts, there shall be included in the body of the instrument the following statement: "THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007."

(3) In all owners' sale agreements and earnest money receipts subject to ORS 358.505, there shall be included in the body of the instrument or by addendum the following statement: "THE PROPERTY DESCRIBED IN THIS INSTRUMENT IS SUBJECT TO SPECIAL ASSESSMENT UNDER ORS 358.505. *[ORS 358.515 REQUIRES NOTIFICATION TO THE STATE HISTORIC PRESERVATION OFFICER OF SALE OR TRANSFER OF THIS PROPERTY.]*"

(4) An action may not be maintained against the county recording officer for recording an instrument that does not contain the statement required in subsection (1) or (2) of this section.

(5) An action may not be maintained against any person for failure to include in the instrument the statement required in subsection (1) or (2) of this section, or for recording an instrument that

does not contain the statement required in subsection (1) or (2) of this section, unless the person acquiring or agreeing to acquire fee title to the real property would not have executed or accepted the instrument but for the absence in the instrument of the statement required by subsection (1) or (2) of this section. An action may not be maintained by the person acquiring or agreeing to acquire fee title to the real property against any person other than the person transferring or contracting to transfer fee title to the real property.

SECTION 20. ORS 358.482, 358.526 and 358.535 are repealed.

SECTION 21. Section 7 of this 2009 Act, the amendments to ORS 93.040, 358.475, 358.480, 358.487, 358.490, 358.495, 358.499, 358.505, 358.509, 358.511, 358.515, 358.525, 358.528, 358.540, 358.541, 358.543 and 358.545 by sections 1 to 5 and 8 to 19 and the repeal of ORS 358.482, 358.526 and 358.535 by section 20 of this 2009 Act apply to tax years beginning on or after July 1, 2010.

SECTION 22. The unit captions used in this 2009 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2009 Act.

SECTION 23. This 2009 Act takes effect on the 91st day after the date on which the regular session of the Seventy-fifth Legislative Assembly adjourns sine die.

Passed by Senate June 12, 2009

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Secretary of Senate
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President of Senate

Passed by House June 24, 2009

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Speaker of House

Received by Governor:

.....M.,....., 2009

Approved:

.....M.,....., 2009

.....
Governor

Filed in Office of Secretary of State:

.....M.,....., 2009

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Secretary of State