

## Enrolled House Bill 3609

Sponsored by Representative OLSON, Senator MORSE; Representatives BRUUN, CAMERON, FREEMAN, GILLIAM, HANNA, HUFFMAN, JENSON, KENNEMER, KRIEGER, MAURER, RICHARDSON, THOMPSON, WEIDNER, WINGARD (Presession filed.)

CHAPTER .....

AN ACT

Relating to enterprise zones; creating new provisions; amending ORS 285C.105, 285C.200, 285C.210, 285C.225, 285C.230, 285C.235 and 285C.240; and prescribing an effective date.

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

**SECTION 1.** Section 2 of this 2010 Act is added to and made a part of ORS 285C.050 to 285C.250.

**SECTION 2.** For purposes of ORS 285C.200 (3):

(1) When the conditions specified in subsection (2) of this section exist, the sponsor of an enterprise zone may:

(a) Specify a minimum number of employees that an authorized business firm must maintain throughout the exemption period that is less than the employment requirements of ORS 285C.200 (1)(c); and

(b) Extend the period of time for which the qualified property of the authorized business firm may continue to be exempt from taxation under ORS 285C.175, not to exceed two additional tax years.

(2) The zone sponsor may take the actions specified in subsection (1) of this section when the following conditions exist:

(a) There has been a decline for two or more consecutive quarters in the last 12 months in seasonally adjusted nonfarm payroll employment; and

(b) The unemployment rate of the county in which the enterprise zone is located is at least two percentage points greater than the comparable unemployment rate for this state, as defined by the most recently available data published or officially provided and verified by the United States Government or the Employment Department.

(3) When the zone sponsor has taken the actions specified in subsection (1) of this section, the authorized business firm may not file a claim for exemption under ORS 285C.175 unless it otherwise meets all of the requirements of ORS 285C.200 (1) for any tax year during the exemption period as extended under subsection (1)(b) of this section.

(4) The actions of the zone sponsor under subsection (1) of this section must be set forth in a resolution adopted by the governing body of the sponsor within 60 days of taking the actions. A resolution adopted under this subsection may be revoked or modified at the request of the zone sponsor at any time during the exemption period as extended under subsection (1)(b) of this section.

**(5) An eligible business firm authorized under ORS 285C.140 does not lose its status as an authorized business firm solely because the zone sponsor has taken the actions specified in subsection (1) of this section.**

**SECTION 3.** ORS 285C.200 is amended to read:

285C.200. (1) The qualified property of an authorized business firm may be exempt from property taxation under ORS 285C.175 only if the firm meets the following qualifications:

(a) The firm is an eligible business firm engaged in eligible business operations under ORS 285C.135 that are located inside the enterprise zone;

(b) The firm owns or leases qualified property that is located inside the enterprise zone;

(c) The employment of the firm, no later than the date the exemption is claimed under ORS 285C.220 or April 1 following the year in which the investment in qualified property is made, whichever is earlier, is not less than the greater of:

(A) 110 percent of the annual average employment of the firm; or

(B) The annual average employment of the firm plus one employee;

(d) The firm does not diminish employment outside the enterprise zone as described in subsections [(4) and] (5) **and (6)** of this section;

(e) The firm does not substantially curtail operations within the enterprise zone as described in ORS 285C.210; and

(f) The firm complies in all material respects with local, Oregon and federal laws applicable to the firm's operations inside the enterprise zone since the application for authorization and throughout the period of exemption, as prescribed by rule.

(2) Notwithstanding subsection (1)(c) or (e) of this section, an eligible business firm may meet the qualifications of this section if the firm has satisfied the following requirements:

(a) The firm is authorized subject to ORS 285C.155 and the firm satisfies those requirements; and

(b)(A) The firm completes an investment of \$25 million or more in qualified property; or

(B) The firm fulfills the requirements of ORS 285C.205 and the employment of the firm does not decrease below the annual average employment of the firm.

**(3) Notwithstanding subsection (1)(c) or (e) or (2) of this section, an eligible business firm is a qualified business firm under this section if:**

**(a) The firm is authorized under ORS 285C.140;**

**(b) The zone sponsor has taken the actions and the firm has satisfied the requirements specified in section 2 of this 2010 Act; and**

**(c) The firm completes an investment of \$4 million or more in qualified property if it is in a rural enterprise zone or \$8 million or more in qualified property if it is in an urban enterprise zone.**

[(3)] (4) An authorized business firm that engages in both eligible and ineligible operations in an enterprise zone and is an eligible business firm because of ORS 285C.135 (3) meets the qualifications of this section if:

(a) The eligible operations of the firm under ORS 285C.135 meet the qualifications of this section; and

(b) The employees of the firm work a majority of their time in eligible operations within the enterprise zone.

[(4)] (5) A business firm does not meet the qualifications of this section if the firm or any other firm under common control closes or permanently curtails operations in another part of the state more than 30 miles from the nearest boundary of the enterprise zone in which the firm seeks a property tax exemption. This subsection applies to the transfer of any of the business firm's operations to an enterprise zone from another part of the state, if the closure or permanent curtailment in the other part of the state diminished employment in the county and more local labor markets after authorization and on or before December 31 of the first tax year for which any qualified property of the firm in that zone would otherwise be exempt under ORS 285C.175.

[(5)] (6) An authorized business firm that moves any of its employees from a site or sites within 30 miles from the nearest boundary of the enterprise zone after authorization may meet the quali-

fications under this section if the employment of the firm has been increased within the zone and at the site or sites from which the employees were transferred, no later than April 1 preceding the first tax year for which qualified property of the firm is exempt under ORS 285C.175, to not less than 110 percent of the annual average employment of the firm within the zone and the site or sites from which the employees were transferred, calculated over the 12 months preceding the date of application for authorization.

[(6)] (7) For purposes of subsection (1)(f) of this section, the Oregon Business Development Department shall adopt rules that define the effect of noncompliance on an eligible business firm's continuing exemption in an enterprise zone and that indicate what is necessary to establish the noncompliance in terms of materiality of the relevant violation, the finality of applicable legal or regulatory proceedings and judgments involving the firm, the failure by the firm to perform or submit to remedial or curative actions and similar factors.

[(7)] (8) As used in this section:

(a) "Annual average employment of the firm" means the average employment of the firm, calculated over the 12 months preceding the date of application for authorization.

(b) Except as provided in subsection [(5)] (6) of this section, "employment of the firm" means:

(A) The number of employees working for the firm a majority of their time in eligible operations at locations within the enterprise zone; or

(B) In the case of a firm described in ORS 285C.135 (5)(b), the number of employees working a majority of their time at the facility in the enterprise zone for which authorization was obtained.

**SECTION 4.** ORS 285C.105 is amended to read:

285C.105. (1) The sponsor of an enterprise zone shall:

(a) Appoint a local zone manager. Upon appointment of the local zone manager, the sponsor shall provide written notice thereof to the Oregon Business Development Department, the county assessor and the Department of Revenue.

(b) Provide enhanced local public services, local incentives and local regulatory flexibility included in the application for designation of the enterprise zone or in the resolution under ORS 285C.115 (7) to authorized or qualified business firms and assist authorized or qualified business firms in using enhanced local public services, local incentives and local regulatory flexibility.

(c) Review and approve or deny applications for authorization under ORS 285C.140.

(d) Assist the county assessor in administering the property tax exemption and in performing other duties assigned to the assessor under ORS 285C.050 to 285C.250.

(e) Maintain, implement and periodically update a plan for marketing the enterprise zone including strategies for retention, expansion, start-up and recruitment of eligible business firms.

(f) Manage the enterprise zone in accordance with ORS 285C.050 to 285C.250.

(g) Identify property available for sale or lease to eligible business firms under ORS 285C.110.

(h) Prepare indices of street addresses, tax lot numbers or other information to facilitate the identification of land inside of an urban enterprise zone.

(i) Provide written notice to the county assessor, the Department of Revenue, the Oregon Business Development Department and any relevant publicly funded job training provider of the conditions and policies adopted or normally sought by the sponsor under ORS 285C.150, 285C.155 or 285C.160 **or section 2 of this 2010 Act**, and take the actions necessary to implement and enforce the conditions and policies and any other reasonable requirements imposed pursuant to ORS 285C.155 or 285C.160 **or section 2 of this 2010 Act**.

(j) Conduct, or assist in conducting, annual reporting of enterprise zone activity or effort, if requested by the county assessor or the Oregon Business Development Department.

(2) If more than one city, county or port sponsors an enterprise zone, the jurisdictions shall act jointly in performing the duties imposed on a sponsor under ORS 285C.050 to 285C.250.

**SECTION 5.** ORS 285C.210 is amended to read:

285C.210. (1) For purposes of ORS 285C.175, 285C.200 and 285C.240, operations of a business firm are substantially curtailed when:

(a) The number of employees of the firm within the enterprise zone is reduced by more than 85 percent from the highest number of employees of the firm within the enterprise zone;

(b) The number of employees of a firm within the enterprise zone has been reduced by more than 50 percent from the highest number of employees of the firm within the enterprise zone for a period of time that is equal to or more than nine months; or

(c) The annual average number of employees within the enterprise zone during the first assessment year for which the exemption under ORS 285C.175 is granted, or any subsequent year in which an exemption is claimed, is reduced below the greater of:

(A) The annual average number of employees of the business firm within the enterprise zone, averaged over the 12 months preceding the date of the application for authorization, plus one employee; or

(B) 110 percent of the annual average number of employees of the firm within the enterprise zone, averaged over the 12 months preceding the date of the application for authorization.

(2) For the purposes of this section:

(a) The number of employees of a firm within the enterprise zone is the employment of the firm, as defined in ORS 285C.200, on the earlier of the date a claim for exemption is filed under ORS 285C.220 or April 1, of each assessment year for which an exemption under ORS 285C.175 is claimed, and for the year immediately following the last assessment year for which an exemption is claimed.

(b) Except as specified in subsection (1)(c) of this section, the annual average number of employees of the firm is the number of firm employees within the enterprise zone averaged over each assessment year in which an exemption under ORS 285C.175 is allowed, using employment figures for no fewer than four equivalent periods during the year.

(c) For the first assessment year for which an authorized business firm that qualifies under ORS 285C.200 [(5)] **(6)** claims an exemption under ORS 285C.175, substantial curtailment under subsection (1)(a) or (c) of this section shall be determined by:

(A) Combining the number of employees of the firm within the enterprise zone and the number of employees at all other sites of the firm within the area described in ORS 285C.200 [(5)] **(6)**; and

(B) Combining the annual average number of employees of the firm within the enterprise zone with the annual average number of employees at any other site of the firm from which employees were transferred into the enterprise zone.

**(3) Notwithstanding subsections (1) and (2) of this section, it is not a substantial curtailment of operations of a business firm for purposes of ORS 285C.175, 285C.200 and 285C.240 if the sponsor of an enterprise zone has taken the actions and the firm has satisfied the requirements specified in section 2 of this 2010 Act.**

**SECTION 6.** ORS 285C.225 is amended to read:

285C.225. (1) An exemption claim filed under ORS 285C.220 must, when applicable, include a sponsor's addendum setting forth any information required by the sponsor of the enterprise zone pursuant to ORS 285C.140 (5), 285C.150, 285C.155 or 285C.160 **or section 2 of this 2010 Act.**

(2) For the first tax year for which qualified property is exempt under ORS 285C.175, the claim filed under ORS 285C.220 must include a property schedule listing the qualified property.

(3)(a) The business firm is required to include the property schedule described in subsection (2) of this section with a claim filed under ORS 285C.220 only once for any item of qualified property. The firm shall include additional property schedules with subsequent claims in order to claim exemption of additional qualified property that is pursuant to the same application for authorization.

(b) The firm may not file an additional property schedule to claim an exemption for additional qualified property for a tax year that is more than two years after the first tax year for which any qualified property of the firm was exempt under ORS 285C.175, except pursuant to another authorization application.

(4) The property schedule shall be set forth on a form prescribed by the Department of Revenue and shall contain:

(a) A list of all qualified property that satisfies all requirements for exemption under ORS 285C.175 for the tax year for which the exemption is being claimed and that has not been exempt under ORS 285C.175 for a previous tax year;

(b) For each item of property described in paragraph (a) of this subsection, the cost of the property and the date the property was placed in service;

(c) Any information needed to determine compliance with any applicable requirements under ORS 285C.180, 285C.185 or 285C.190;

(d) In the case of qualified property that is leased by the business firm, a signature on the property schedule or other evidence that the enterprise zone exemption is acknowledged by the owner of the leased property; and

(e) Any other information required by the Department of Revenue.

(5) The county assessor may allow the business firm to amend the property schedule to include any other item of qualified property described in subsection (2) of this section that was not listed on the original property schedule included in the claim filed for the assessment year. An amendment to the property schedule may not be made after June 1 of the assessment year.

**SECTION 7.** ORS 285C.230 is amended to read:

285C.230. (1) In granting or denying an exemption under ORS 285C.175, the county assessor may:

(a) Reasonably rely on information set forth in the exemption claim filed under ORS 285C.220; and

(b) Request and be given assistance from the sponsor before making certain determinations, including but not limited to:

(A) Determining if the exemption is being claimed by a qualified business firm under ORS 285C.200;

(B) Determining the extent to which qualified property is used by persons other than the qualified business firm or is used for business activities that may not be conducted in an enterprise zone by an eligible business firm under ORS 285C.135; or

(C) Determining if the use, leasing or location of qualified property satisfies applicable requirements under ORS 285C.180, 285C.185 or 285C.190.

(2) The county assessor is not responsible for determining if the firm has satisfied any requirement established by the sponsor under ORS 285C.140, 285C.150, 285C.155, 285C.160 or 285C.205 **or section 2 of this 2010 Act.**

(3) If a business firm fails to timely file an exemption claim under ORS 285C.220:

(a) The assessor or the sponsor may use the authority granted to the assessor under ORS 285C.235; or

(b) The assessor may deny the exemption under ORS 285C.175 for the current tax year or for any future tax year for which the property would otherwise qualify for exemption under ORS 285C.175.

(4) If the sponsor or the assessor has reason to question the accuracy or veracity of any information contained in a claim filed under ORS 285C.220, the sponsor or the assessor may use the authority provided under ORS 285C.235.

(5) If any information submitted by a business firm under ORS 285C.220 indicates that the firm is no longer in compliance with any requirements that apply to the firm or the qualified property of the firm, the information shall be considered notice for purposes of ORS 285C.240.

(6) The county assessor shall make reasonable and timely efforts to notify an authorized business firm that is seeking or receiving an exemption under ORS 285C.175 of the filing requirements under ORS 285C.220, but the county assessor and the Department of Revenue are not under any obligation other than as otherwise provided in ORS 285C.050 to 285C.250 to seek or receive information about the continued entitlement of property to an exemption under ORS 285C.175.

(7) The sponsor is primarily responsible for assisting a business firm in timely filing claims under ORS 285C.220. If the sponsor, or a local zone manager designated by the sponsor, does not receive a copy of the claim as required under ORS 285C.220 by the time the claim is required to be

filed under ORS 285C.220, the sponsor or manager shall immediately contact the assessor for taking action under subsection (3) of this section.

**SECTION 8.** ORS 285C.235 is amended to read:

285C.235. (1) The county assessor is at all times authorized to demand reports by registered or certified mail from owners or lessees of qualified property concerning the use of the qualified property and the employment status of the qualified business firm for purposes of ORS 285C.050 to 285C.250. If, after 60 days' notice in writing by registered or certified mail, the owner or lessee fails to comply with this demand, the assessor may disqualify the property under ORS 285C.240, giving written notice of the disqualification to the Department of Revenue and the owner or lessee of the qualified property.

(2) The assessor is under no obligation to verify compliance by a qualified business firm with requirements imposed on the firm by the sponsor under ORS 285C.150, 285C.155, 285C.160 or 285C.205 **or section 2 of this 2010 Act.**

(3) The sponsor of an enterprise zone may initiate procedures in order to verify compliance by qualified business firms with requirements imposed under ORS 285C.050 to 285C.250. The procedures may include written requests to the assessor by the local zone manager or an executive official of the sponsor that the assessor exercise authority under this section for a particular qualified business firm.

**SECTION 9.** ORS 285C.240 is amended to read:

285C.240. (1) The county assessor of any county in which an enterprise zone is situated or the sponsor shall be notified in writing by the qualified business firm or by the owner of the qualified property leased by the qualified business firm not later than July 1 following the assessment year for which the exemption is claimed and in which one of the following events occurs:

(a) Property granted exemption from taxation under ORS 285C.175 is sold, exchanged, transported or otherwise disposed of for use outside the enterprise zone or for use by an ineligible business firm;

(b) The qualified business firm closes or so reduces eligible operations that the reduction constitutes a substantial curtailment of operations under ORS 285C.210, unless a substantial curtailment of operations is permitted under ORS 285C.200 (2);

(c) The qualified business firm fails to meet any of the qualifications required under ORS 285C.200;

(d) The qualified business firm fails to meet any condition that the firm is required to satisfy under ORS 285C.150, 285C.155 or 285C.205 **or section 2 of this 2010 Act** or any term of an agreement entered into with the sponsor under ORS 285C.160 with which the firm had agreed to comply;

(e) The qualified business firm uses the property to conduct activities in the enterprise zone that are not eligible activities; or

(f) Property of the qualified business firm for which exemption under ORS 285C.175 is claimed ceases to be qualified property under ORS 285C.180.

(2) If the sponsor receives written notice under subsection (1) of this section, the sponsor shall immediately send a copy of the notice to the county assessor of the county in which the enterprise zone is situated.

(3)(a) When an assessor receives written notice under subsection (1) or (2) of this section, the assessor shall disqualify the property for the assessment year following the disqualifying event and 100 percent of the additional taxes calculated under ORS 285C.175 shall be assessed against the property for each year for which the property had been granted exemption under ORS 285C.175.

(b) Notwithstanding paragraph (a) of this subsection, if a qualified business firm fails to meet any of the requirements of an agreement entered into by the firm under ORS 285C.160 during the exemption, but meets all other applicable requirements under ORS 285C.050 to 285C.250 during the first three years of the exemption, the qualified property of the firm may not be disqualified during the first three years of exemption for failure to comply with the requirements of the agreement entered into under ORS 285C.160.

(c) The additional taxes assessed under this subsection shall be reduced by the amount, if any, paid by the qualified business firm to the sponsor under subsection (6) of this section for the same property.

(4) If the qualified business firm or owner fails to give the notice on time or at all as required by subsection (1) of this section, upon discovering the property no longer qualifies for the exemption due to a circumstance described in subsection (1) of this section, the assessor shall:

(a) Disqualify the property from exemption;

(b) Compute the amount of taxes described in subsection (3) of this section as though notice had been given, and add to that amount an additional penalty equal to 20 percent of the total amount so computed; and

(c) Add the property to the assessment and tax roll without the exemption as if the notice had been given.

(5) The amount determined to be due under subsections (3) and (4) of this section:

(a) May be paid to the tax collector before completion of the next general property tax roll pursuant to ORS 311.370; and

(b) 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 property taxes.

(6)(a) Notwithstanding subsections (3) and (5) of this section, if an assessor or sponsor receives notice from a business firm under subsection (1)(b), (c) or (d) of this section and the qualified business firm has not closed its operations, the qualified business firm shall pay the sponsor an amount equal to the property taxes for the qualified property in the assessment year for which the exemption is claimed in lieu of the amounts otherwise due under subsection (3) of this section.

(b) Moneys collected under paragraph (a) of this subsection shall be used by the sponsor to benefit the residents of the enterprise zone and for the development of jobs, skills and training for residents of the enterprise zone and the zone's immediate vicinity.

(c) This subsection applies only to the first notice given by the business firm under subsection (1)(b), (c) or (d) of this section.

(d) If the sponsor does not receive the full amount to be paid by the qualified business firm under paragraph (a) of this subsection, the assessor shall disqualify the property and impose the entire amount of additional taxes as prescribed under subsection (3) of this section.

(7) An assessor may not disqualify property under this section for failure by a qualified business firm or an owner of qualified property leased by the qualified business firm to notify the assessor or the enterprise zone sponsor that the qualified business firm does not meet requirements under ORS 285C.150, 285C.155, 285C.160 or 285C.205, without having received written communication from the sponsor that demonstrates that the qualified business firm does not meet the requirements.

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

(9) If property is disqualified from exemption under this section, the assessor shall notify the qualified business firm, and the owner of any qualified property that is leased by the firm, of the disqualification. The notification shall be made in writing. The assessor shall provide copies of the disqualification to the sponsor, the Department of Revenue and the Oregon Business Development Department. The decision of the assessor to disqualify property under this section may be appealed to the Oregon Tax Court under ORS 305.404 to 305.560.

**SECTION 10. Section 2 of this 2010 Act and the amendments to ORS 285C.105, 285C.200, 285C.210, 285C.225, 285C.230, 285C.235 and 285C.240 by sections 3 to 9 of this 2010 Act apply to property tax years beginning on or after July 1, 2009.**

**SECTION 11. This 2010 Act takes effect on the 91st day after the date on which the special session of the Seventy-fifth Legislative Assembly adjourns sine die.**

**Passed by House February 17, 2010**

**Repassed by House February 23, 2010**

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Chief Clerk of House

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Speaker of House

**Passed by Senate February 22, 2010**

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President of Senate

**Received by Governor:**

.....M,....., 2010

**Approved:**

.....M,....., 2010

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Governor

**Filed in Office of Secretary of State:**

.....M,....., 2010

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Secretary of State