

**TESTIMONY OF DOUGLAS C. MACCOURT IN SUPPORT OF HB 2289**

**HOUSE COMMITTEE ON TRANSPORTATION AND ECONOMIC DEVELOPMENT**

**FEBRUARY 16, 2015, 3:00 TO 5:00 PM**

MY NAME IS DOUGLAS MACCOURT. I AM A PARTNER WITH THE LAW FIRM OF ATER WYNNE LLP BASED IN PORTLAND. I RESIDE AT 2338 NE 17<sup>TH</sup> AVE IN PORTLAND.

I HAVE PRACTICED ENVIRONMENTAL LAW IN OREGON FOR OVER 25 YEARS. I DEVELOPED AND IMPLEMENTED OREGON'S FIRST MUNICIPAL BROWNFIELDS PROGRAM IN 1998, AND WAS A MEMBER OF THE FIRST BROWNFIELD TASK FORCE ESTABLISHED BY HB 3352 IN 1995 WHICH ESTABLISHED THE STATEWIDE DEFINITION OF A BROWNFIELD STILL IN USE TODAY AND LED TO THE CREATION OF THE SUCCESSFUL BROWNFIELDS LOAN AND GRANT PROGRAMS AT THE OREGON ECONOMIC DEVELOPMENT DEPARTMENT OR BUSINESS OREGON.

I AM TESTIFYING TODAY IN SUPPORT OF HB 2289. AS CO-CHAIR OF THE OREGON BROWNFIELDS COALITION FINANCE COMMITTEE, I PERSONALLY RESEARCHED A WIDE VARIETY OF BROWNFIELDS TAX CREDIT LAWS IN PLACE FROM OVER FOURTEEN (14) DIFFERENT STATES ACROSS THE US.

THE OREGON BROWNFIELD COALITION SPENT THE LAST YEAR EVALUATING A NUMBER OF DIFFERENT FINANCIAL, REGULATORY AND STRUCTURAL INCENTIVES TO PROMOTE THE CLEANUP AND REDEVELOPMENT OF BROWNFIELD SITES THROUGHOUT THE STATE OF OREGON.

AS YOU HAVE HEARD FROM THE RESEARCH SUMMARIZED BY THE LAST WITNESS, MODEST INCOME TAX CREDITS TOWARD A PORTION OF THE MONEY SPENT IN CLEANING UP CONTAMINATED BROWNFIELD SITES ARE ONE OF THE MOST POWERFUL TOOLS TO CREATE JOBS, NEW TAX AND NON TAX REVENUES, SPEED UP ENVIRONMENTAL RESTORATION AND CREATE THE SPARK THAT DRIVES COMMUNITY BASED ECONOMIC DEVELOPMENT, ESPECIALLY FOR SMALL BUSINESSES IN BOTH RURAL AND URBAN AREAS

THE GOALS OF THE COALITION, AND OF THE FINANCE AND BROWNFIELD PROFESSIONALS REPRESENTED ON THE COALITION'S FINANCE COMMITTEE, IN DECIDING UPON A TAX CREDIT INCENTIVE AND STRUCTURING THE PROPOSED TAX CREDIT WERE STRAIGHTFORWARD:

IT MUST SERVE A CRITICAL FINANCIAL NEED THAT IS NOT CURRENTLY MET BY EXISTING STATE OR LOCAL PROGRAMS IN OREGON

IT MUST BUILD ON AND LEVERAGE EXISTING STATE AND LOCAL PROGRAMS, NOT DUPLICATE THEM

IT MUST PROVIDE THE MAXIMUM BENEFITS IN TERMS OF REVENUE GENERATION, JOB CREATION, ENVIRONMENTAL RESTORATION AND ECONOMIC DEVELOPMENT

IT MUST MINIMIZE COST AND REGULATORY BURDEN TO BOTH THE STATE AGENCY ADMINISTERING THE INCENTIVE AND THE TAXPAYERS OF THE STATE.

HB 2289, WITH THE AMENDMENTS TO BE INTRODUCED THAT I WILL BRIEFLY SUMMARIZE, ACCOMPLISHES THESE GOALS. SPECIFICALLY:

HB 2289 ALLOWS FOR A TAX CREDIT FOR 50% OF ELIGIBLE COSTS CLAIMED IN THE TAX YEAR IN WHICH THE COSTS WERE INCURRED.

HB 2289 ALLOWS FOR THE TRANSFER OF TAX CREDITS IN RECOGNITION OF THE ADDITIONAL FINANCIAL BURDENS REQUIRED FOR BROWNFIELD REDEVELOPMENT.

ELIGIBLE COSTS MUST EXCEED 25% OF THE ASSESSED VALUE OF THE BROWNFIELD SITE, WITH THE RESULT THAT ONLY THOSE SITES THAT WOULD REMAIN CONTAMINATED AND UNDEVELOPED ARE ELIGIBLE FOR THE TAX CREDIT.

A BONUS CREDIT ABOVE 50% IS AUTHORIZED FOR CREATION OF CERTAIN MEASURABLE ADDITIONAL BENEFITS INCLUDING THE USE OF MINORITY AND WOMEN BUSINESS ENTERPRISES WHO CONDUCT THE WORK, CREATION OF AFFORDABLE HOUSING, CLEANUP WORK CONDUCTED ON A BROWNFIELD IN VERIFIED LOW INCOME COMMUNITIES, CREATION OF PERMANENT OPEN SPACE, AND THE CONSTRUCTION OF NEW HEALTH CARE FACILITIES IN AREAS DESIGNATED AS HAVING SIGNIFICANT UNMET HEALTH CARE NEEDS.

THE AMENDMENTS TO HB 2289 ADD AN ADDITIONAL BONUS FOR THE CREATION OF AT LEAST 5 PERMANENT FULL TIME JOBS WITH PAY AT LEAST AS MUCH AS THE STATE OR COUNTY AVERAGE AND WHERE AT LEAST \$500,000 IS INVESTED IN THE BROWNFIELD SITE.

THE AMENDMENTS CLARIFY THAT ONLY OWNERS AND OPERATORS OF BROWNFIELD SITES, AS DEFINED UNDER EXISTING STATE CLEANUP LAW AT ORS 465.200, ARE ALLOWED TO APPLY FOR THE CREDIT.

THE AMENDMENTS FURTHER CLARIFY THAT THE OWNER OR OPERATOR OF THE BROWNFIELD SITE MUST CERTIFY, BY NOTARIZED AFFIDAVIT OR DECLARATION TO THE DEPARTMENT OF REVENUE WITH THE APPLICATION, THAT:

- (A) THE APPLICANT IS NOT RESPONSIBLE FOR CAUSING, CONTRIBUTING TO OR EXACERBATING CONTAMINATION AT THE SITE;

- (B) THE APPLICANT IS PARTICIPATING IN A DEQ SUPERVISED CLEANUP PROGRAM OR ACTIVITY THROUGH A BINDING VOLUNTARY AGREEMENT OR ORDER AND CONDUCTING A "REMOVAL" OR "REMEDIAL ACTION" AS THOSE TERMS ARE DEFINED UNDER EXISTING CLEANUP LAW; AND
- (C) THE APPLICANT IS IN COMPLIANCE WITH THAT VOLUNTARY AGREEMENT OR ORDER.

THE POINT OF THESE AMENDMENTS IS TO INSURE THAT NO "BAD ACTORS" ARE ELIGIBLE FOR THE TAX CREDIT, AND TO INSURE THAT THE CLEANUP ACTIVITIES FOR WHICH THE CREDIT IS SOUGHT ARE SUBJECT TO DEQ SUPERVISION AND OVERSIGHT.

HB 2289 AUTHORIZES THE DEPARTMENT OF REVENUE TO RECAPTURE THE DEPARTMENT'S FULL COSTS OF ADMINISTERING THE TAX CREDIT, INCLUDING REVIEWING AND VERIFYING THE APPLICATION, AND RECOVERING ANY CREDIT LATER DETERMINED BY THE DEPARTMENT TO BE BASED ON FRAUD OR MISREPRESENTATION IN THE APPLICATION.

THE AMENDMENTS TO HB 2289 SIMPLIFY THE PROCESS BY WHICH THE DEPARTMENT OF REVENUE DETERMINES THE NECESSARY INFORMATION FOR THE APPLICATION AND BY WHICH THE DEPARTMENT SETS FEES FOR RECOVERING ITS COSTS, INCLUDING AUTHORIZING RULEMAKING IF REQUIRED.

THE AMENDMENTS CLARIFY THAT IN ADDITION TO BANKRUPTCY TRUSTEES AND LENDERS, LOCAL GOVERNMENTS WHO ARE TRANSFERRED A TAX CREDIT BY ACQUIRING A BROWNFIELD SITE INVOLUNTARILY THROUGH FORECLOSURE OR THROUGH EMINENT DOMAIN ARE NOT SUBJECT TO FORFIETING THAT TRANSFERRED CREDIT IF REVOCATION PROCEEDINGS ARE INITIATED AGAINST THE ORIGINAL TAXPAYING ENTITY.

FINALLY, THE AMENDMENTS AUTHORIZE THE DEPARTMENT OF REVENUE TO ROLL OVER SUCCESSFUL APPLICANTS TO A SUBSEQUENT TAX YEAR IN THE EVENT THAT THE DEPARTMENT EXCEEDS ITS AUTHORIZED TAX CREDIT CAP IN THE TAX YEAR WHEN THE ELIGIBLE COSTS WERE INCURRED BY THE TAXPAYER.

IN CONCLUSION, ON BEHALF OF THE OREGON BROWNFIELD COALITION, I URGE THE COMMITTEE TO ACCEPT THE AMENDMENTS TO HB 2289 AND PASS HB 2289.

I AM HAPPY TO ANSWER ANY QUESTIONS THE COMMITTEE MAY HAVE. MY CONTACT INFO IS: email: [dcm@aterwynne.com](mailto:dcm@aterwynne.com); phone: 503-705-6031.

THANK YOU FOR THE OPPORTUNITY TO TESTIFY IN SUPPORT OF HB 2289.