

**A-Engrossed
House Bill 2289**

Ordered by the House April 15
Including House Amendments dated April 15

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Transportation and Economic Development)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Creates tax credit for cleanup of brownfield property. Applies to tax years beginning on or after January 1, 2016, and before January 1, 2022.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to a tax credit for cleanup of brownfield property; creating new provisions; amending ORS
3 314.752, 315.053 and 318.031; and prescribing an effective date.

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

5 **SECTION 1. Sections 2 to 5 of this 2015 Act are added to and made a part of ORS chapter**
6 **315.**

7 **SECTION 2. (1) As used in this section:**

8 (a) "Affordable housing" means:

9 (A) Rental housing that is occupied by households earning up to 60 percent of the area
10 median income, adjusted for family size; or

11 (B) Owner-occupied housing occupied by households earning not more than the area
12 median income, adjusted for family size.

13 (b) "Brownfield property" or "brownfield" means a brownfield as defined in ORS 285A.185.

14 (c)(A) "Eligible costs" means:

15 (i) Remedial action costs;

16 (ii) Costs of demolition of existing site structures to the extent necessary for remedial
17 action or removal;

18 (iii) Costs of abatement of releases of hazardous substances within existing site struc-
19 tures on a brownfield;

20 (iv) Costs of new improvements to the extent that they are constructed for the purpose
21 of containing hazardous substances or limiting exposure to releases of hazardous substances;
22 and

23 (v) Costs of management, handling, removal, treatment and disposal of solid waste, en-
24 vironmental media and building materials containing hazardous substances encountered in
25 connection with redevelopment of a brownfield.

26 (B) "Eligible costs" does not include costs funded by any state or federal grants for en-
27 vironmental site investigation or remediation that are awarded for the same brownfield.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (d) "Owner or operator" means any person who owns, leases, operates, controls or ex-
2 ercises significant control over the operation of a brownfield property. "Owner or operator"
3 does not include a person who, without participating in the management of a brownfield,
4 holds indicia of ownership primarily to protect a security interest in a brownfield property.

5 (e) "Release," "remedial action," "remedial action costs" and "removal" have the
6 meanings given those terms in ORS 465.200.

7 (2) A credit against the taxes otherwise due under ORS chapter 316 (or, if the taxpayer
8 is a corporation, under ORS chapter 317 or 318) shall be allowed for eligible costs on
9 brownfield properties incurred in the tax year. The credit allowed under this section may be
10 earned by an owner or operator of a brownfield, including a local government or a tax-
11 exempt entity. Except as provided in subsection (3) of this section, the amount of credit
12 allowed shall be 50 percent of eligible costs, but may not exceed \$500,000 for the taxpayer for
13 the tax year.

14 (3) A owner or operator that has incurred eligible costs may claim an additional 25 per-
15 cent of eligible costs for each of the enhancements listed in this subsection, but the total
16 claimed under this section for a brownfield may not exceed the lesser of total eligible costs
17 or \$1 million. The owner or operator shall be allowed the additional amount for the tax year
18 in which the owner or operator demonstrates any of the following:

19 (a) The use of at least 50 percent minority or women business enterprises, as defined in
20 ORS 200.100, in the completion of work for which eligible costs are claimed;

21 (b) Completion of a removal or remedial action at a brownfield property located in a
22 census tract where at least 20 percent of the residents are below the federal poverty line as
23 determined under 42 U.S.C. 9902, as amended and in effect on December 31, 2014;

24 (c) Construction of housing in which at least 20 percent of the dwelling units are afford-
25 able housing and will remain affordable housing for at least 10 years;

26 (d) Completion of a removal or remedial action at a brownfield property at least 50 per-
27 cent of which is subsequently permanently protected as public open space through a legally
28 binding agreement with a local jurisdiction;

29 (e) Completion of a removal or remedial action at a brownfield property located in an
30 area designated as having unmet health care needs in the most recent unmet need desig-
31 nation report by the Office of Rural Health and on which hospital buildings or community
32 health care facilities are constructed; or

33 (f) Commercial or industrial redevelopment at a brownfield for which eligible costs may
34 be claimed, and where at least five permanent jobs, excluding construction or remediation
35 jobs, paying at least the county or state average in annual per employee compensation, are
36 created and \$500,000 or more is invested.

37 (4) In order to earn a credit under this section, the owner or operator of a brownfield
38 property must incur eligible costs and must submit a notarized affidavit or declaration to the
39 Department of Revenue that the owner or operator:

40 (a) Has not, by any acts or omissions, caused, contributed to or exacerbated the release
41 of a hazardous substance in any manner that could be the basis of liability under ORS 465.255
42 relating to the brownfield;

43 (b) Has entered into an order or an agreement with the Department of Environmental
44 Quality pursuant to which the owner or operator will perform removal or remedial action
45 at the brownfield subject to oversight by the Department of Environmental Quality; and

1 (c) Is in compliance with the order or agreement entered into by the owner or operator
2 with the Department of Environmental Quality.

3 (5) Prior to the allowance of a credit under this section:

4 (a) The owner or operator shall obtain approval for the amount of the credit by applica-
5 tion to the Department of Revenue; and

6 (b) The eligible costs must exceed 25 percent of the assessed value of the brownfield.

7 (6) The owner or operator shall submit an application to the Department of Revenue with
8 all documentation required by the Department of Revenue to substantiate the eligible costs
9 for the brownfield and shall claim the credit on a form prescribed by the Department of
10 Revenue that contains the information required by the Department.

11 (7) The Department of Revenue may adopt a schedule of reasonable fees that the de-
12 partment may require of applicants for the administration of credits under this section.

13 (8) Any tax credit otherwise allowable under this section that is not used by the taxpayer
14 in a particular tax year may be carried forward and offset against the owner or operator's
15 tax liability for the next succeeding tax year. Any credit remaining unused in the next suc-
16 ceeding tax year may be carried forward and used in the second succeeding tax year, and
17 likewise any credit not used in that second succeeding tax year may be carried forward and
18 used in the third succeeding tax year, and any credit not used in that third succeeding tax
19 year may be carried forward and used in the fourth succeeding tax year, and any credit not
20 used in that fourth succeeding tax year may be carried forward and used in the fifth suc-
21 ceeding tax year, but may not be carried forward for any tax year thereafter.

22 (9) In the case of a credit allowed under this section:

23 (a) A nonresident shall be allowed the credit under this section in the proportion provided
24 in ORS 316.117.

25 (b) If a change in the status of the owner or operator from resident to nonresident or
26 from nonresident to resident occurs, the credit allowed by this section shall be determined
27 in a manner consistent with ORS 316.117.

28 (c) If a change in the taxable year of the owner or operator occurs as described in ORS
29 314.085, or if the department terminates the owner or operator's taxable year under ORS
30 314.440, the credit allowed under this section shall be prorated or computed in a manner
31 consistent with ORS 314.085.

32 **SECTION 3.** (1) The Director of the Department of Revenue may order the suspension
33 or revocation of a tax credit issued or transferred under section 2 or 4 of this 2015 Act if the
34 director finds that the tax credit was obtained by fraud or misrepresentation.

35 (2) As soon as the order of revocation under this section becomes final, the director shall
36 notify the owner or operator and any transferee under section 4 of this 2015 Act of the order
37 of revocation. Upon notification, the Department of Revenue immediately shall proceed to
38 collect:

39 (a) In the case in which no portion of a tax credit has been transferred under section 4
40 of this 2015 Act, those taxes not paid by the transferor as a result of the tax credits provided
41 to the transferor under section 2 of this 2015 Act, from the transferor or a successor in in-
42 terest to the transferor. All prior tax credits provided to the transferor by virtue of the tax
43 credit shall be forfeited.

44 (b) In the case in which all or a portion of a tax credit has been transferred under section
45 4 of this 2015 Act, the maximum theoretical amount of the tax credits allowable under sec-

1 tion 2 of this 2015 Act, from the transferor.

2 (3)(a) The Department of Revenue shall have the benefit of all laws of this state per-
3 taining to the collection of income and excise taxes and may proceed to collect the amounts
4 described in subsection (2) of this section from the owner or operator that obtained the tax
5 credit, or any successor in interest to the business interests of that person. An assessment
6 of tax is not necessary and a statute of limitation does not preclude the collection of taxes
7 described in this subsection.

8 (b) For purposes of this subsection, a local government, lender, bankruptcy trustee or
9 other person that acquires an interest through eminent domain authority by purchase or
10 condemnation, bankruptcy or through foreclosure of a security interest is not considered to
11 be a successor in interest to the business interests of the person that obtained the tax credit.

12 (4) Notwithstanding subsections (1) to (3) of this section, a tax credit or portion of a tax
13 credit held by a transferee under section 4 of this 2015 Act may not be considered revoked
14 for purposes of the transferee, the tax credit allowable to the transferee under section 2 of
15 this 2015 Act may not be reduced, and a transferee is not liable under subsections (2) and (3)
16 of this section.

17 **SECTION 4.** (1) An owner or operator of a brownfield property that has obtained a tax
18 credit under section 2 of this 2015 Act may transfer the credit to a taxpayer subject to tax
19 under ORS chapter 316, 317 or 318.

20 (2) A tax credit allowed under section 2 of this 2015 Act may be transferred on or before
21 the date on which the return is due for the tax year in which the credit may first be claimed.
22 After that date, no portion of a credit allowed under section 2 of this 2015 Act may be
23 transferred.

24 (3) To transfer the tax credit, the owner or operator eligible for the credit and the tax-
25 payer that will claim the credit shall, on or before the date prescribed in subsection (2) of
26 this section, jointly file a notice of tax credit transfer with the Department of Revenue. The
27 notice shall be given on a form prescribed by the department that contains all of the fol-
28 lowing:

- 29 (a) The name and address of the transferor and transferee;
- 30 (b) The amount of the tax credit that is being transferred;
- 31 (c) The amount of the tax credit that is being retained by the transferor; and
- 32 (d) Any other information required by the department.

33 (4) The State Department of Energy may establish by rule a minimum discounted value
34 of a tax credit under this section.

35 (5) The Department of Revenue may by rule establish procedures for the transfer of tax
36 credits provided by this section.

37 **SECTION 5.** (1) The total amount of potential tax credits for eligible costs on brownfield
38 properties in this state may not, at the time of approval by the Department of Revenue un-
39 der section 2 of this 2015 Act, exceed \$10 million in any tax year.

40 (2) In the event that the Director of the Department of Revenue receives applications for
41 credits in excess of the limitation described in subsection (1) of this section, the director
42 shall allocate the issuance of tax credits according to the order in which applications are
43 received and may allow credits pursuant to approved applications in the next tax year in
44 which credits are available.

45 **SECTION 6.** ORS 315.053 is amended to read:

1 315.053. An income tax credit allowed under ORS 315.141, 315.331, 315.336, 315.341 or 315.354
2 or section 12, chapter 855, Oregon Laws 2007, **or section 2 of this 2015 Act** may be transferred or
3 sold only to one or more of the following:

- 4 (1) A C corporation.
- 5 (2) An S corporation.
- 6 (3) A personal income taxpayer.

7 **SECTION 7.** ORS 314.752 is amended to read:

8 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
9 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
10 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
11 allowable to the shareholders of the S corporation.

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

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

21 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
22 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
23 316.117, then that provision shall apply to the nonresident shareholder.

24 (5) As used in this section, "business tax credit" means a tax credit granted to personal income
25 taxpayers to encourage certain investment, to create employment, economic opportunity or incentive
26 or for charitable, educational, scientific, literary or public purposes that is listed under this sub-
27 section as a business tax credit or is designated as a business tax credit by law or by the Depart-
28 ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309
29 (tribal taxes on reservation enterprise zones and reservation partnership zones), ORS 315.104 (fore-
30 station and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141
31 (biomass production for biofuel), ORS 315.156 (crop gleaning), ORS 315.164 and 315.169 (agriculture
32 workforce housing), ORS 315.204 (dependent care assistance), ORS 315.208 (dependent care facili-
33 ties), ORS 315.213 (contributions for child care), ORS 315.304 (pollution control facility), ORS 315.326
34 (renewable energy development contributions), ORS 315.331 (energy conservation projects), ORS
35 315.336 (transportation projects), ORS 315.341 (renewable energy resource equipment manufacturing
36 facilities), ORS 315.354 and 469B.151 (energy conservation facilities), ORS 315.507 (electronic com-
37 merce), ORS 315.533 (low income community jobs initiative) and ORS 317.115 (fueling stations nec-
38 cessary to operate an alternative fuel vehicle) **and section 2 of this 2015 Act (brownfield**
39 **properties).**

40 **SECTION 8.** ORS 318.031 is amended to read:

41 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter
42 317 shall be administered as uniformly as possible (allowance being made for the difference in im-
43 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-
44 corporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.141, 315.156, 315.204,
45 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.507 and 315.533 **and section 2 of this 2015**

1 **Act** (all only to the extent applicable to a corporation) and ORS chapter 317.

2 **SECTION 9. Sections 2 to 5 of this 2015 Act and the amendments to ORS 314.752, 315.053**
3 **and 318.031 by sections 6 to 8 of this 2015 Act apply to tax years beginning on or after Jan-**
4 **uary 1, 2016, and before January 1, 2022.**

5 **SECTION 10. This 2015 Act takes effect on the 91st day after the date on which the 2015**
6 **regular session of the Seventy-eighth Legislative Assembly adjourns sine die.**

7
