

House Bill 2289

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 **as introduced**.

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" means that a dwelling unit may be purchased or rented, with or without
9 government assistance, by persons of eligible income.

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

11 (c)(A) "Eligible costs" includes:

12 (i) Remedial action costs;

13 (ii) Costs of demolition of existing site structures if necessary for remedial action or re-
14 moval;

15 (iii) Costs of abatement of contamination within existing site structures on a brownfield
16 property; and

17 (iv) Costs of new improvements that are constructed for the purpose of containment of
18 hazardous substances or limitation of exposure to residual contamination.

19 (B) "Eligible costs" does not include the sum of any state or federal grants for environ-
20 mental site investigation or remediation that are awarded for the same brownfield property
21 in the tax year.

22 (d) "Remedial action," "remedial action costs" and "removal" have the meaning given
23 those terms in ORS 465.200.

24 (2) A credit against the taxes otherwise due under ORS chapter 316 (or, if the taxpayer
25 is a corporation, under ORS chapter 317 or 318) shall be allowed for eligible costs of qualify-
26 ing cleanup activities on brownfield properties. The credit allowed under this section may be
27 earned by a public, private or nonprofit entity. Except as provided in subsection (3) of this
28 section, the amount of credit allowed shall be 50 percent of eligible costs, but may not exceed
29 \$500,000.

30 (3) A taxpayer that has completed cleanup of a brownfield property and is eligible for the

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 initial amount of credit allowed under subsection (2) of this section may claim an additional
 2 25 percent of eligible costs for each of the enhancements listed in this subsection, but the
 3 total claimed under this section for the property may not exceed the lesser of total eligible
 4 costs or \$1 million. The taxpayer shall be allowed the additional amount for the tax year in
 5 which the taxpayer demonstrates completion of any of the following:

6 (a) Performance of the cleanup of the property using at least 50 percent minority or
 7 women business enterprises, as defined in ORS 200.100;

8 (b) Performance of the cleanup of a property located in a census tract where at least 20
 9 percent of the residents are below the federal poverty line as determined under 42 U.S.C.
 10 9902, as amended and in effect on December 31, 2014;

11 (c) Construction, within three calendar years of receipt of a certificate of completion of
 12 cleanup from the Department of Environmental Quality, of housing in which at least 50
 13 percent of the dwelling units are affordable and will remain affordable for at least 10 years,
 14 to households earning less than 80 percent of area median income;

15 (d) Performance of the cleanup of a property at least 50 percent of which is subsequently
 16 permanently protected as public open space through a legally binding agreement with a local
 17 jurisdiction; or

18 (e) Performance of the cleanup of a property in an area designated as having unmet
 19 health care needs in the most recent unmet need designation report by the Office of Rural
 20 Health, on which within three calendar years of receipt of a certificate of completion of
 21 cleanup from the Department of Environmental Quality, hospital buildings or community
 22 health care facilities are constructed.

23 (4) In order to earn a credit under this section, the owner of a brownfield property must
 24 be an entity that incurs eligible costs and be:

25 (a) A purchaser that is not responsible for contamination of the property, as demon-
 26 strated through a phase one environmental site assessment or through other means ap-
 27 proved by the Department of Environmental Quality; or

28 (b) A current property owner that has demonstrated that it is not responsible for con-
 29 tamination of the property or was unaware of contamination at the time of purchase.

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

31 (a) The property owner shall obtain certification of eligibility for the credit, and of the
 32 amount certified for the credit, from the Department of Revenue;

33 (b) The property owner must enroll the brownfield property in a cleanup program ad-
 34 ministered by the Department of Environmental Quality; and

35 (c) The eligible costs must exceed 25 percent of the assessed value of the brownfield
 36 property.

37 (6) The credit may be claimed for the tax year in which the property owner receives a
 38 certificate of completion of cleanup from the Department of Environmental Quality. After
 39 receipt of the certificate, the property owner may submit an application to the Department
 40 of Revenue. The property owner shall also submit with the application copies of contracts
 41 and documentation that substantiate the actual cleanup costs for the brownfield property.

42 (7) The owner of each brownfield property shall maintain the contracts and documenta-
 43 tion required under subsection (6) of this section in its records for a period of at least five
 44 years after the tax year for which the credit is certified and shall provide the materials to
 45 the Department of Revenue upon request.

1 (8) The credit shall be claimed on a form prescribed by the Department of Revenue that
 2 contains the information required by the department.

3 (9) By rule and after hearing, the Department of Revenue shall adopt a schedule of rea-
 4 sonable fees that the department may require of applicants for the administration of credits
 5 under this section. Before adopting or revising the fees, the department shall estimate the
 6 total cost of administration to the department. The fees must be used to recover the an-
 7 ticipated cost of administering credits under this section, including filing, investigating,
 8 granting and rejecting applications for certification and ensuring compliance with this sec-
 9 tion, and may not exceed the total cost estimated by the department. Any excess fees must
 10 be used by the department to reduce any potential future fee increases.

11 (10) Any tax credit otherwise allowable under this section that is not used by the tax-
 12 payer in a particular tax year may be carried forward and offset against the taxpayer's tax
 13 liability for the next succeeding tax year. Any credit remaining unused in the next succeed-
 14 ing tax year may be carried forward and used in the second succeeding tax year, and likewise
 15 any credit not used in that second succeeding tax year may be carried forward and used in
 16 the third succeeding tax year, and any credit not used in that third succeeding tax year may
 17 be carried forward and used in the fourth succeeding tax year, and any credit not used in
 18 that fourth succeeding tax year may be carried forward and used in the fifth succeeding tax
 19 year, but may not be carried forward for any tax year thereafter.

20 (11) In the case of a credit allowed under this section:

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

23 (b) If a change in the status of the taxpayer from resident to nonresident or from non-
 24 resident to resident occurs, the credit allowed by this section shall be determined in a man-
 25 ner consistent with ORS 316.117.

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

30 **SECTION 3.** (1) Under the procedures for a contested case under ORS chapter 183, the
 31 Director of the Department of Revenue may order the suspension or revocation of the cer-
 32 tificate issued or transferred under section 2 or 4 of this 2015 Act if the director finds that:

33 (a) The certificate was obtained by fraud or misrepresentation;

34 (b) The holder of the certificate or the property owner has failed to clean up the
 35 brownfield property in compliance with the certificate; or

36 (c) The property owner has failed to complete a cleanup program administered by the
 37 Department of Environmental Quality.

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

42 (a) In the case in which no portion of a certificate has been transferred under section 4
 43 of this 2015 Act, those taxes not paid by the certificate holder as a result of the tax credits
 44 provided to the certificate holder under section 2 of this 2015 Act, from the certificate holder
 45 or a successor in interest to the business interests of the certificate holder. All prior tax

1 credits provided to the holder of the certificate by virtue of the certificate shall be forfeited.

2 (b) In the case in which all or a portion of a certificate has been transferred under sec-
 3 tion 4 of this 2015 Act, the maximum theoretical amount of the tax credits allowable under
 4 section 2 of this 2015 Act, from the transferor.

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

11 (b) For purposes of this subsection, a lender, bankruptcy trustee or other person that
 12 acquires an interest through bankruptcy or through foreclosure of a security interest is not
 13 considered to be a successor in interest to the business interests of the person that obtained
 14 the certificate.

15 (4) Notwithstanding subsections (1) to (3) of this section, a certificate or portion of a
 16 certificate held by a transferee under section 4 of this 2015 Act may not be considered re-
 17 voked for purposes of the transferee, the tax credit allowable to the transferee under section
 18 2 of this 2015 Act may not be reduced, and a transferee is not liable under subsections (2)
 19 and (3) of this section.

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

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

27 (3) To transfer the tax credit, the owner of the brownfield property eligible for the credit
 28 and the taxpayer that will claim the credit shall, on or before the date prescribed in sub-
 29 section (2) of this section, jointly file a notice of tax credit transfer with the Department of
 30 Revenue. The notice shall be given on a form prescribed by the department that contains all
 31 of the following:

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

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

38 (5) The Department of Revenue, in consultation with the State Department of Energy,
 39 may by rule establish procedures for the transfer of tax credits provided by this section.

40 **SECTION 5.** (1) The total amount of potential tax credits for cleanup of brownfield
 41 property in this state may not, at the time of certification under section 2 of this 2015 Act,
 42 exceed \$10 million in any tax year.

43 (2) In the event that the Director of the Department of Revenue receives applications for
 44 credits in excess of the limitation in subsection (1) of this section, the director shall allocate
 45 the issuance of certificates according to the order in which applications are received.

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

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

5 (1) A C corporation.

6 (2) An S corporation.

7 (3) A personal income taxpayer.

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

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

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

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

22 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
23 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
24 316.117, then that provision shall apply to the nonresident shareholder.

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

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

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

1 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.507 and 315.533 **and section 2 of this 2015**
2 **Act** (all only to the extent applicable to a corporation) and ORS chapter 317.

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

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

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