

Senate Bill 813

Sponsored by Senator FERRIOLI (at the request of Don Pucket)

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**.

Repeals requirement that Department of Revenue estimate future amounts of deferred taxes, interest on taxes and fees to be paid by department for homestead granted property tax deferral. Reduces amount of lien held by department against tax-deferred homestead to actual amounts of deferred taxes, interest on taxes and fees.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to liens for deferred amounts of property taxes arising under the homestead property tax
3 deferral program; creating new provisions; amending ORS 305.130, 305.140, 311.673, 311.674,
4 311.683, 311.686 and 311.695; repealing ORS 311.679; and prescribing an effective date.

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

6 **SECTION 1.** ORS 311.673 is amended to read:

7 311.673. (1) The Department of Revenue shall have a lien against tax-deferred property for pay-
8 ment of deferred taxes plus interest on the deferred taxes and any fees paid by the department in
9 connection with the filing, recording, release or satisfaction of the lien.

10 (2) *[The liens for deferred taxes shall]* **Liens arising under this section with respect to tax**
11 **deferred property** attach to the property on July 1 of the *[year in which the taxes were assessed]*
12 **first property tax year for which the property was granted deferral.**

13 (3) *[The deferred property tax liens shall]* **Liens arising under this section** have the same pri-
14 ority as other real property tax liens except that *[the lien]* **liens** of mortgages, trust deeds or secu-
15 rity interests that *[is]* **are** filed, recorded or noted on any certificate of title or in any record
16 maintained by the Department of Consumer and Business Services pursuant to ORS 446.566 to
17 446.646 prior in time to the attachment of *[the lien for deferred taxes]* **a lien arising under this**
18 **section** shall be prior to the *[liens for deferred taxes]* **lien arising under this section.**

19 (2) (4)(a) *[The deferred property tax lien]* **A lien arising under this section** may be foreclosed
20 by the department as if it were a purchase money mortgage under ORS chapter 88. *[The court may*
21 *award reasonable attorney fees to the department if the department prevails in a foreclosure action*
22 *under this section. The court may award reasonable attorney fees to a defendant who prevails in a*
23 *foreclosure action under this section if the court determines that the department had no objectively*
24 *reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of*
25 *the trial court.]*

26 **(b) In a foreclosure action under this section, a court may award:**

27 **(A) Reasonable attorney fees to the prevailing party.**

28 **(B) All costs to the department associated with foreclosure of the lien if the department**
29 **prevails.**

30 **(5) The notice of lien for tax-deferred properties recorded as provided in ORS 311.675 (1)**

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 **and (2) shall list the amount of deferred taxes, interest and fees for which a lien arises under**
 2 **this section.**

3 [(3)] (6) Receipts from foreclosure proceedings shall be credited in the same manner as other
 4 repayments of deferred property taxes under ORS 311.701.

5 [(4) *This section applies only to deferred property tax liens arising prior to October 3, 1989.*]

6 (7)(a) **By means of voluntary payment made pursuant to ORS 311.690, a taxpayer may**
 7 **limit the amount of the lien for deferred taxes created under this section.**

8 (b)(A) **If the taxpayer desires that the limit be reflected in the records of the county, the**
 9 **taxpayer must request, subject to any rules adopted by the department, that the department**
 10 **cause a partial satisfaction of the lien to be recorded in the county.**

11 (B) **Upon receipt of a request under this paragraph, the department shall cause a partial**
 12 **satisfaction, in the amount of the voluntary payment, to be recorded.**

13 (c) **Nothing in this subsection affects the priority of liens arising under this section.**

14 **SECTION 2. ORS 311.679 is repealed.**

15 **SECTION 3.** ORS 305.130 is amended to read:

16 305.130. (1) The Department of Revenue may be made a party in any action in any court of this
 17 state or of the United States having jurisdiction of the subject matter to quiet title to, to remove
 18 a cloud from the title to, or for the foreclosure of a mortgage or other lien upon, any real property
 19 or personal property, or both, upon which the State of Oregon has or claims to have a lien under
 20 ORS 311.673, [311.679,] 311.771, 314.430 or 321.570 or ORS chapter 323, and the judgment in such
 21 action shall be conclusive and binding upon the State of Oregon and such department.

22 (2) The complaint in such action shall set forth with particularity the nature of any such lien
 23 had or claimed by the State of Oregon. The summons in such action, together with a copy of the
 24 complaint therein, shall be served on such department in the manner prescribed by ORCP 7 D(3)(h),
 25 and such summons shall require such department to appear and answer the complaint within 60 days
 26 from the date of such service.

27 **SECTION 4.** ORS 305.140 is amended to read:

28 305.140. (1) Any person having an interest in or lien upon any real property may request the
 29 Department of Revenue in writing to release such real property from a cloud on the title of or lien
 30 on such property existing, created or continued under any one or more of the following:

31 (a) A warrant provided for in ORS 314.430, 321.570 or 323.610; or

32 (b) The provisions of ORS 311.673, [311.679,] 311.689, 311.711 or 311.771.

33 (2) If, upon a request under subsection (1) of this section, the department finds that a sale of
 34 such real property would not result in satisfaction in whole or in part of the taxes due, it shall ex-
 35 ecute a release of such cloud or lien upon such property, and such release shall be conclusive evi-
 36 dence of the removal and extinguishment of such cloud or lien in respect of such real property.

37 (3) In addition to the release of cloud or lien provided for in subsection (1) of this section, the
 38 department may execute releases on part or all of any real property in the following cases, which
 39 releases shall be conclusive evidence of the removal and extinguishment of such cloud or lien:

40 (a) If the department finds that liability for the amount assessed, together with all interest
 41 thereon and penalties and costs in respect thereof, has been satisfied;

42 (b) If the department finds that the fair market value of that part of the property remaining
 43 subject to the cloud or lien is at least double the amount of the liability remaining unsatisfied in
 44 respect of such tax and the amount of all prior liens upon the property;

45 (c) If there is supplied to the department either an irrevocable letter of credit issued by an in-

1 sured institution as defined in ORS 706.008 or a bond, in such form and with such surety as the
2 department considers sufficient, conditioned upon the payment of the amount of the warrant, to-
3 gether with all interest in respect thereof, within 60 days after the issuance of the release; or

4 (d) If there is paid to the department in partial satisfaction of the amount of the warrant pro-
5 vided for in ORS 314.430, 321.570 or 323.610 or the amount of any lien under ORS 311.673,
6 [311.679,] 311.689, 311.711 or 311.771, an amount not less than the value, as determined by the de-
7 partment, of the lien of the State of Oregon upon the part of the property so to be released. In de-
8 termining such value the department shall give consideration to the fair market value of the part
9 of the property so to be released and to such liens thereon as have priority to the lien of the State
10 of Oregon.

11 **SECTION 5.** ORS 311.674, as amended by section 1, chapter 41, Oregon Laws 2014, is amended
12 to read:

13 311.674. (1) If eligibility for deferral of homestead property is established as provided in ORS
14 311.666 to 311.701, the Department of Revenue shall notify the county assessor and the county
15 assessor shall show on the current ad valorem assessment and tax roll that the property is tax-
16 deferred property by an entry clearly designating the property as tax-deferred property.

17 (2) When requested by the department, the tax collector shall send to the department the tax
18 statement for each tax-deferred property as soon as the taxes are extended upon the roll.

19 (3) Interest shall accrue on the actual amount of taxes advanced to the county for the tax-
20 deferred property at the rate of six percent per annum.

21 (4)(a) For property taxes deferred after October 3, 1979, the state liens provided by ORS 311.673
22 [and 311.679] and recorded under ORS 311.675 shall be for the actual amount of taxes advanced to
23 the counties and not for the gross amount of taxes for which the property would be liable as shown
24 on the tax statement for each tax-deferred property.

25 (b) For taxes deferred prior to October 3, 1979, the lien under ORS 311.673 is for the gross
26 amount of taxes extended upon the tax roll against each tax-deferred property and interest shall
27 continue to accrue on the gross amount of taxes rather than on the actual amount of taxes paid to
28 the county.

29 **SECTION 6.** ORS 311.683 is amended to read:

30 311.683. (1) If tax-deferred homestead property is acquired by the Department of Transportation
31 through condemnation, the taxpayer may elect to continue to defer the payment of taxes and inter-
32 est by:

33 (a) Filing a written notice of intent to continue deferral with the Department of Revenue on or
34 before 30 days after the date the Department of Transportation has acquired title to the condemned
35 homestead; and

36 (b) Filing a claim for deferral with respect to a new homestead within one year after the De-
37 partment of Transportation has acquired title to the condemned homestead.

38 (2) Upon receipt of a notice of intent to continue deferral of taxes attributable to a condemned
39 homestead, the Department of Revenue shall prepare an estimate of the amount of taxes, interest
40 and fees that have been and, if approved under subsections (3) and (5) of this section, will continue
41 to be deferred upon the release and satisfaction of the lien on the condemned homestead and the
42 recordation of the lien on the new homestead.

43 (3) After preparing the estimate described in subsection (2) of this section, the Department of
44 Revenue shall grant a temporary deferral of taxes with respect to the condemned homestead not to
45 exceed the length of time described in subsection (1)(b) of this section if:

1 (a) The Department of Transportation has acquired title to the condemned homestead; and

2 (b) The taxpayer has a legally enforceable escrow agreement with a title company that:

3 (A) Provides for an interest-bearing escrow account in which moneys are deposited that are
4 sufficient to pay in full the amount of deferred taxes, interest and fees on the condemned homestead
5 property as estimated under subsection (2) of this section;

6 (B) Establishes the Department of Revenue as the beneficiary of the escrow agreement;

7 (C) Provides that the moneys of the escrow account are to be released to the taxpayer upon the
8 Department of Revenue's approval of continued deferral under subsection (5) of this section and the
9 recordation of the lien described in subsection (6) of this section with the county clerk; and

10 (D) Provides that the full amount of the estimated deferred taxes, interest and fees related to
11 the condemned homestead are to be released to the Department of Revenue if the continued deferral
12 described in subsection (5) of this section is not granted by the Department of Revenue.

13 (4) The Department of Revenue shall provide a release or satisfaction of the lien on the con-
14 demned homestead when an escrow account has been established as provided under subsection (3)
15 of this section.

16 (5) Upon receipt of a claim for the deferral of taxes for a new homestead that also seeks to
17 continue the deferral of taxes attributable to a condemned homestead for which a temporary deferral
18 has been granted under subsection (3) of this section, the Department of Revenue shall approve the
19 continued deferral of the taxes temporarily deferred under subsection (3) of this section if:

20 (a) The taxpayer's equity interest in the new homestead equals or exceeds in value the total of
21 the amount of deferred taxes, interest and fees on the condemned homestead as estimated under
22 subsection (2) of this section, plus \$10,000;

23 (b) The taxpayer is entitled to tax deferral under ORS 311.666 to 311.701 with respect to the new
24 homestead; and

25 (c) The taxpayer consents to the continued deferral of taxes and to the lien on the new home-
26 stead property as provided in subsection (6) of this section.

27 (6) Upon granting the continued deferral under subsection (5) of this section, the Department
28 of Revenue shall have a lien on the new homestead in the amount of the estimate prepared under
29 subsection (2) of this section plus interest and any fees incurred in connection with the recording
30 of the lien. The lien described in this subsection shall be in addition to any other lien under ORS
31 311.673 that the Department of Revenue shall have with respect to the new homestead. The pro-
32 visions of ORS [311.679] **311.673** relating to liens shall apply to the lien described in this subsection.
33 At the time the lien described in this subsection is recorded, the escrow account described in sub-
34 section (3) of this section shall be closed and the moneys in the account released to the taxpayer.

35 (7) The Department of Revenue may prescribe such rules as are needed to implement the pro-
36 visions of this section.

37 **SECTION 7.** ORS 311.686 is amended to read:

38 311.686. (1) Whenever any of the circumstances listed in ORS 311.684 occurs:

39 (a) The deferral of taxes for the assessment year in which the circumstance occurs:

40 (A) Shall continue for the assessment year if the circumstance occurs on or after September 1.

41 (B) Shall be discontinued for the assessment year if the circumstance occurs before September
42 1.

43 (b) Except as provided in subsection (2) of this section and ORS 311.688, the amounts of deferred
44 property taxes, including accrued interest, for all years shall be due and payable to the Department
45 of Revenue on or before August 15 of the year following the calendar year in which the circum-

1 stance occurs.

2 (2) If the circumstance listed in ORS 311.684 (4) occurs, the amount of deferred taxes is due and
3 payable five days before the date of removal of the property from the state.

4 (3) If the amounts falling due as provided in this section are not paid on or before the due date,
5 the amounts shall be deemed delinquent as of that date and the property shall be subject to fore-
6 closure as provided in ORS 311.673 [*or 311.679*].

7 **SECTION 8.** ORS 311.695 is amended to read:

8 311.695. (1) A transferee of a homestead who is ineligible to claim, or does not claim, deferral
9 under ORS 311.666 to 311.701, or that is not an individual, is jointly and severally liable for amounts
10 payable under ORS 311.686 to the extent of the positive amount, if any, remaining after subtracting
11 the amount of all liens prior to the Department of Revenue's liens for deferred taxes arising under
12 ORS 311.673 [*or 311.679*] from the real market value of the homestead entered on the last certified
13 assessment and tax roll prior to the date of the transfer.

14 (2) The department shall issue by mail a notice of liability to a transferee after deferred amounts
15 for which the transferee is liable under this section become payable under ORS 311.686.

16 (3)(a) Within 30 days after the department mails the notice of liability required under subsection
17 (2) of this section, the transferee:

18 (A) Shall pay the deferred amounts, plus interest and fees; or

19 (B)(i) Shall notify the department in writing of objections to the notice of liability; and

20 (ii) May request a conference. The provisions of ORS 305.265 governing a conference requested
21 relating to a notice of deficiency apply to a conference requested under this sub-subparagraph.

22 (b) If the department does not receive payment or written objection to the notice of liability
23 within 30 days after the notice has been mailed, the notice of liability becomes final.

24 (c) A transferee may appeal the notice of liability to the tax court in the manner provided for
25 an appeal from a notice of assessment within 90 days after the notice becomes final under this
26 subsection.

27 (4)(a) After a conference, or, if no conference is requested, a determination of the issues raised
28 by the written objections, the department shall mail to the transferee a conference letter affirming,
29 canceling or adjusting the notice of liability.

30 (b) Within 90 days after the date on which the conference letter is mailed to the transferee, the
31 transferee shall pay the deferred amounts, plus interest and fees, or appeal to the tax court in the
32 manner provided for an appeal from a notice of assessment.

33 (5)(a) If more than one transferee may be held jointly and severally liable for payment of de-
34 ferred amounts under this section, the department may require any or all of the transferees who
35 may be held liable to appear before the department for a joint determination of liability. The de-
36 partment shall notify each transferee of the time and place set for the determination of liability.

37 (b) Each transferee notified of a joint determination under this subsection shall appear and
38 present such information as is necessary to establish that person's liability or nonliability for pay-
39 ment of deferred amounts to the department. If any person notified fails to appear, the department
40 shall make its determination on the basis of all the information and evidence presented. The
41 department's determination shall be binding on all persons notified and required to appear under
42 this subsection.

43 (c)(A) If an appeal is taken to the Oregon Tax Court pursuant to ORS 305.404 to 305.560 by any
44 transferee determined to be liable for deferred amounts under this subsection, each person required
45 to appear before the department under this subsection shall be impleaded by the plaintiff. The de-

1 partment may implead any transferee who may be held jointly and severally liable for the payment
2 of deferred amounts. Each person impleaded under this paragraph shall be made a party to the
3 action before the tax court and shall make available to the tax court such information as was pre-
4 sented before the department, as well as such other information as may be presented to the court.

5 (B) The court may determine that one or more persons impleaded under this paragraph are lia-
6 ble for deferred amounts without regard to any earlier determination by the department that an
7 impleaded person was not liable for deferred amounts.

8 (C) If any person required to appear before the court under this subsection fails or refuses to
9 appear or bring such information in part or in whole, or is outside the jurisdiction of the tax court,
10 the court shall make its determination on the basis of all the evidence introduced. All such evidence
11 shall constitute a public record and shall be available to the parties and the court. The determi-
12 nation of the tax court shall be binding on all persons made parties to the action under this sub-
13 section.

14 (d) Nothing in this section shall be construed to preclude a determination by the department or
15 the Oregon Tax Court that more than one transferee is jointly and severally liable for deferred
16 amounts.

17 **SECTION 9. (1) The amendments to ORS 305.130, 305.140, 311.673, 311.674, 311.683, 311.686**
18 **and 311.695 by sections 1 and 3 to 8 of this 2015 Act and the repeal of ORS 311.679 by section**
19 **2 of this 2015 Act apply to property tax years beginning on or after July 1, 2015.**

20 **(2) The repeal of ORS 311.679 by section 2 of this 2015 Act cancels any amount of a lien**
21 **on tax deferred property based on amounts estimated under ORS 311.679 and not paid by the**
22 **Department of Revenue to the county on or before the effective date of this 2015 Act.**

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

25