

**PROPOSED AMENDMENTS TO
HOUSE BILL 2289**

1 On page 1 of the printed bill, delete lines 5 through 30 and delete pages
2 2 through 6 and insert:

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

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

6 **“(a) ‘Affordable housing’ means:**

7 **“(A) Rental housing that is occupied by households earning up to**
8 **60 percent of the area median income, adjusted for family size; or**

9 **“(B) Owner-occupied housing occupied by households earning not**
10 **more than the area median income, adjusted for family size.**

11 **“(b) ‘Brownfield property’ or ‘brownfield’ means a brownfield as**
12 **defined in ORS 285A.185.**

13 **“(c)(A) ‘Eligible costs’ means:**

14 **“(i) Remedial action costs;**

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

17 **“(iii) Costs of abatement of releases of hazardous substances within**
18 **existing site structures on a brownfield;**

19 **“(iv) Costs of new improvements to the extent that they are con-**
20 **structed for the purpose of containing hazardous substances or limit-**
21 **ing exposure to releases of hazardous substances; and**

22 **“(v) Costs of management, handling, removal, treatment and dis-**

1 disposal of solid waste, environmental media and building materials
2 containing hazardous substances encountered in connection with re-
3 development of a brownfield.

4 “(B) ‘Eligible costs’ does not include costs funded by any state or
5 federal grants for environmental site investigation or remediation that
6 are awarded for the same brownfield.

7 “(d) ‘Owner or operator’ means any person who owns, leases, oper-
8 ates, controls or exercises significant control over the operation of a
9 brownfield property. ‘Owner or operator’ does not include a person
10 who, without participating in the management of a brownfield, holds
11 indicia of ownership primarily to protect a security interest in a
12 brownfield property.

13 “(e) ‘Release,’ ‘remedial action,’ ‘remedial action costs’ and ‘re-
14 moval’ have the meanings given those terms in ORS 465.200.

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

23 “(3) A owner or operator that has incurred eligible costs may claim
24 an additional 25 percent of eligible costs for each of the enhancements
25 listed in this subsection, but the total claimed under this section for
26 a brownfield may not exceed the lesser of total eligible costs or \$1
27 million. The owner or operator shall be allowed the additional amount
28 for the tax year in which the owner or operator demonstrates any of
29 the following:

30 “(a) The use of at least 50 percent minority or women business en-

1 **terprises, as defined in ORS 200.100, in the completion of work for**
2 **which eligible costs are claimed;**

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

7 **“(c) Construction of housing in which at least 20 percent of the**
8 **dwelling units are affordable housing and will remain affordable**
9 **housing for at least 10 years;**

10 **“(d) Completion of a removal or remedial action at a brownfield**
11 **property at least 50 percent of which is subsequently permanently**
12 **protected as public open space through a legally binding agreement**
13 **with a local jurisdiction;**

14 **“(e) Completion of a removal or remedial action at a brownfield**
15 **property located in an area designated as having unmet health care**
16 **needs in the most recent unmet need designation report by the Office**
17 **of Rural Health and on which hospital buildings or community health**
18 **care facilities are constructed; or**

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

24 **“(4) In order to earn a credit under this section, the owner or op-**
25 **erator of a brownfield property must incur eligible costs and must**
26 **submit a notarized affidavit or declaration to the Department of Rev-**
27 **enue that the owner or operator:**

28 **“(a) Has not, by any acts or omissions, caused, contributed to or**
29 **exacerbated the release of a hazardous substance in any manner that**
30 **could be the basis of liability under ORS 465.255 relating to the**

1 **brownfield;**

2 **“(b) Has entered into an order or an agreement with the Depart-**
3 **ment of Environmental Quality pursuant to which the owner or oper-**
4 **ator will perform removal or remedial action at the brownfield subject**
5 **to oversight by the Department of Environmental Quality; and**

6 **“(c) Is in compliance with the order or agreement entered into by**
7 **the owner or operator with the Department of Environmental Quality.**

8 **“(5) Prior to the allowance of a credit under this section:**

9 **“(a) The owner or operator shall obtain approval for the amount**
10 **of the credit by application to the Department of Revenue; and**

11 **“(b) The eligible costs must exceed 25 percent of the assessed value**
12 **of the brownfield.**

13 **“(6) The owner or operator shall submit an application to the De-**
14 **partment of Revenue with all documentation required by the Depart-**
15 **ment of Revenue to substantiate the eligible costs for the brownfield**
16 **and shall claim the credit on a form prescribed by the Department of**
17 **Revenue that contains the information required by the Department.**

18 **“(7) The Department of Revenue may adopt a schedule of reasonable**
19 **fees that the department may require of applicants for the adminis-**
20 **tration of credits under this section.**

21 **“(8) Any tax credit otherwise allowable under this section that is**
22 **not used by the taxpayer in a particular tax year may be carried for-**
23 **ward and offset against the owner or operator’s tax liability for the**
24 **next succeeding tax year. Any credit remaining unused in the next**
25 **succeeding tax year may be carried forward and used in the second**
26 **succeeding tax year, and likewise any credit not used in that second**
27 **succeeding tax year may be carried forward and used in the third**
28 **succeeding tax year, and any credit not used in that third succeeding**
29 **tax year may be carried forward and used in the fourth succeeding tax**
30 **year, and any credit not used in that fourth succeeding tax year may**

1 be carried forward and used in the fifth succeeding tax year, but may
2 not be carried forward for any tax year thereafter.

3 **“(9) In the case of a credit allowed under this section:**

4 **“(a) A nonresident shall be allowed the credit under this section in**
5 **the proportion provided in ORS 316.117.**

6 **“(b) If a change in the status of the owner or operator from resident**
7 **to nonresident or from nonresident to resident occurs, the credit al-**
8 **lowed by this section shall be determined in a manner consistent with**
9 **ORS 316.117.**

10 **“(c) If a change in the taxable year of the owner or operator occurs**
11 **as described in ORS 314.085, or if the department terminates the owner**
12 **or operator’s taxable year under ORS 314.440, the credit allowed under**
13 **this section shall be prorated or computed in a manner consistent with**
14 **ORS 314.085.**

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

19 **“(2) As soon as the order of revocation under this section becomes**
20 **final, the director shall notify the owner or operator and any**
21 **transferee under section 4 of this 2015 Act of the order of revocation.**
22 **Upon notification, the Department of Revenue immediately shall pro-**
23 **ceed to collect:**

24 **“(a) In the case in which no portion of a tax credit has been**
25 **transferred under section 4 of this 2015 Act, those taxes not paid by**
26 **the transferor as a result of the tax credits provided to the transferor**
27 **under section 2 of this 2015 Act, from the transferor or a successor in**
28 **interest to the transferor. All prior tax credits provided to the**
29 **transferor by virtue of the tax credit shall be forfeited.**

30 **“(b) In the case in which all or a portion of a tax credit has been**

1 transferred under section 4 of this 2015 Act, the maximum theoretical
2 amount of the tax credits allowable under section 2 of this 2015 Act,
3 from the transferor.

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

11 “(b) For purposes of this subsection, a local government, lender,
12 bankruptcy trustee or other person that acquires an interest through
13 eminent domain authority by purchase or condemnation, bankruptcy
14 or through foreclosure of a security interest is not considered to be a
15 successor in interest to the business interests of the person that ob-
16 tained the tax credit.

17 “(4) Notwithstanding subsections (1) to (3) of this section, a tax
18 credit or portion of a tax credit held by a transferee under section 4
19 of this 2015 Act may not be considered revoked for purposes of the
20 transferee, the tax credit allowable to the transferee under section 2
21 of this 2015 Act may not be reduced, and a transferee is not liable
22 under subsections (2) and (3) of this section.

23 “SECTION 4. (1) An owner or operator of a brownfield property that
24 has obtained a tax credit under section 2 of this 2015 Act may transfer
25 the credit to a taxpayer subject to tax under ORS chapter 316, 317 or
26 318.

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

1 transferred.

2 “(3) To transfer the tax credit, the owner or operator eligible for the
3 credit and the taxpayer that will claim the credit shall, on or before
4 the date prescribed in subsection (2) of this section, jointly file a notice
5 of tax credit transfer with the Department of Revenue. The notice
6 shall be given on a form prescribed by the department that contains
7 all of the following:

8 “(a) The name and address of the transferor and transferee;

9 “(b) The amount of the tax credit that is being transferred;

10 “(c) The amount of the tax credit that is being retained by the
11 transferor; and

12 “(d) Any other information required by the department.

13 “(4) The State Department of Energy may establish by rule a min-
14 imum discounted value of a tax credit under this section.

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

17 “SECTION 5. (1) The total amount of potential tax credits for eli-
18 gible costs on brownfield properties in this state may not, at the time
19 of approval by the Department of Revenue under section 2 of this 2015
20 Act, exceed \$10 million in any tax year.

21 “(2) In the event that the Director of the Department of Revenue
22 receives applications for credits in excess of the limitation described
23 in subsection (1) of this section, the director shall allocate the issuance
24 of tax credits according to the order in which applications are received
25 and may allow credits pursuant to approved applications in the next
26 tax year in which credits are available.

27 “SECTION 6. ORS 315.053 is amended to read:

28 “315.053. An income tax credit allowed under ORS 315.141, 315.331,
29 315.336, 315.341 or 315.354 or section 12, chapter 855, Oregon Laws 2007, or
30 section 2 of this 2015 Act may be transferred or sold only to one or more

1 of the following:

2 “(1) A C corporation.

3 “(2) An S corporation.

4 “(3) A personal income taxpayer.

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

6 “314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits al-
7 lowed or allowable to a C corporation for purposes of ORS chapter 317 or
8 318 shall not be allowed to an S corporation. The business tax credits al-
9 lowed or allowable for purposes of ORS chapter 316 shall be allowed or are
10 allowable to the shareholders of the S corporation.

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

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

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

27 “(5) As used in this section, ‘business tax credit’ means a tax credit
28 granted to personal income taxpayers to encourage certain investment, to
29 create employment, economic opportunity or incentive or for charitable, ed-
30 ucational, scientific, literary or public purposes that is listed under this

1 subsection as a business tax credit or is designated as a business tax credit
2 by law or by the Department of Revenue by rule and includes but is not
3 limited to the following credits: ORS 285C.309 (tribal taxes on reservation
4 enterprise zones and reservation partnership zones), ORS 315.104 (forestation
5 and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways),
6 ORS 315.141 (biomass production for biofuel), ORS 315.156 (crop gleaning),
7 ORS 315.164 and 315.169 (agriculture workforce housing), ORS 315.204 (de-
8 pendent care assistance), ORS 315.208 (dependent care facilities), ORS 315.213
9 (contributions for child care), ORS 315.304 (pollution control facility), ORS
10 315.326 (renewable energy development contributions), ORS 315.331 (energy
11 conservation projects), ORS 315.336 (transportation projects), ORS 315.341
12 (renewable energy resource equipment manufacturing facilities), ORS 315.354
13 and 469B.151 (energy conservation facilities), ORS 315.507 (electronic com-
14 merce), ORS 315.533 (low income community jobs initiative) and ORS 317.115
15 (fueling stations necessary to operate an alternative fuel vehicle) **and sec-
16 tion 2 of this 2015 Act (brownfield properties).**

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

18 “318.031. It being the intention of the Legislative Assembly that this
19 chapter and ORS chapter 317 shall be administered as uniformly as possible
20 (allowance being made for the difference in imposition of the taxes), ORS
21 305.140 and 305.150, ORS chapter 314 and the following sections are incor-
22 porated into and made a part of this chapter: ORS 285C.309, 315.104, 315.141,
23 315.156, 315.204, 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.507 and
24 315.533 **and section 2 of this 2015 Act** (all only to the extent applicable to
25 a corporation) and ORS chapter 317.

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

30 **SECTION 10.** This 2015 Act takes effect on the 91st day after the

1 **date on which the 2015 regular session of the Seventy-eighth Legisla-**
2 **tive Assembly adjourns sine die.”.**

3 _____