

# House Bill 4084

Sponsored by Representatives MCKEOWN, FREDERICK, GORSEK, DAVIS; Representatives EVANS, FAGAN, HACK, HOLVEY, JOHNSON, KENY-GUYER, LIVELY, MCLAIN, PILUSO, RAYFIELD, REARDON, Senators HANSELL, ROBLAN (Presession filed.)

## 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**.

Authorizes certain local governments to adopt ordinance or resolution providing property tax incentive programs that grant special assessment to brownfields or exemption to new and existing improvements and personal property on brownfields for period of up to 10 years, with additional period up to five years based on locally adopted criteria. Caps dollar amount of benefits at specified eligible costs for property.

Provides that ordinance or resolution becomes effective only if rates of taxation of taxing districts located within territory of local government whose governing boards agree to incentive programs, when combined with rate of local government adopting incentive programs, equal 51 percent or more of total combined rate of taxation within territory of local government. Provides that eligible costs equal discounted present value of estimated after-tax costs directly related to remaining work necessary to remove, contain or treat contamination of brownfield.

Provides for clawback of property tax incentive program benefits upon disqualification for failure to comply with eligibility requirements or make reasonable progress on remediation or redevelopment or for misleading or false statements in application to participate in incentive programs.

Sunset authority to adopt ordinance or resolution on January 2, 2037.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to tax incentives for brownfield cleanups; and prescribing an effective date.

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

4 **SECTION 1. (1) The governing body of a city or county, or of a port organized under ORS**  
5 **chapter 777 or 778, may adopt an ordinance or resolution providing for programs that offer**  
6 **either or both of the following ad valorem property tax incentive benefits:**

7 (a) **Special assessment of any land that constitutes a brownfield, as defined in ORS**  
8 **285A.185, located within the respective jurisdiction of the city, county or port.**

9 (b) **Exemption or partial exemption of improvements and personal property on land de-**  
10 **scribed in paragraph (a) of this subsection.**

11 (2)(a) **An ordinance or resolution adopted under this section shall specify the eligibility**  
12 **requirements for the programs, including, but not limited to, a showing by the owner of a**  
13 **brownfield in an application filed under section 2 of this 2016 Act:**

14 (A) **That the owner or authorized representative of the owner has obtained an environ-**  
15 **mental site assessment of the brownfield prepared by a geologist registered under ORS**  
16 **672.505 to 672.705 or a professional engineer as defined in ORS 672.002.**

17 (B) **If the environmental site assessment required under subparagraph (A) of this para-**  
18 **graph concludes that a remedial action, as defined in ORS 465.200, is required in response to**  
19 **the release of a hazardous substance at the brownfield, that the remedial action shall be**  
20 **conducted pursuant to an agreement with, an order of or a program or process authorized**  
21 **by the Department of Environmental Quality. An agreement, order, program or process in-**  
22 **cludes, but is not limited to, the Voluntary Cleanup Program, the Independent Cleanup**

**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 **Pathway, a consent or unilateral order or another process that the department may establish**  
 2 **by rule or policy, pursuant to which the owner or operator is required to perform the re-**  
 3 **medial action at the brownfield.**

4 **(C) That the owner is in compliance with any agreement, order, program or process**  
 5 **governing the conduct of the remedial action under subparagraph (B) of this paragraph.**

6 **(D) That the report of the environmental site assessment required under subparagraph**  
 7 **(A) of this paragraph, and a report prepared by a geologist or professional engineer showing**  
 8 **that any remedial action has complied with applicable state law administered by the depart-**  
 9 **ment, have been submitted to the department.**

10 **(b) Notwithstanding paragraph (a) of this subsection, property is not eligible for tax in-**  
 11 **centive programs adopted pursuant to this section if, at the time an application for the**  
 12 **property is filed under section 2 of this 2016 Act, the property is:**

13 **(A) Subject to assessment under ORS 308.505 to 308.681;**

14 **(B) State-appraised industrial property as defined in ORS 306.126; or**

15 **(C) A federal Superfund site described in ORS 468.531.**

16 **(c) For any property tax year, property granted any other special assessment, exemption**  
 17 **or partial exemption may not be granted benefits under a tax incentive program adopted**  
 18 **pursuant to this section.**

19 **(3)(a)(A) An ordinance or resolution adopted under this section shall specify the period,**  
 20 **not to exceed 10 years, for which the property tax incentive program benefits may be**  
 21 **granted.**

22 **(B) The ordinance or resolution may allow for an additional period, not to exceed five**  
 23 **years, based on criteria set forth in the ordinance or resolution.**

24 **(b) Property may be granted a tax incentive program benefit under this section until:**

25 **(A) The expiration of the period for which the property is eligible for the benefit under**  
 26 **paragraph (a) of this subsection; or**

27 **(B) Notwithstanding paragraph (a) of this subsection, the dollar amount of the benefit**  
 28 **equals the eligible costs for the property as determined under section 3 of this 2016 Act.**

29 **(c) If a city, county or port adopts both a special assessment and an exemption or partial**  
 30 **exemption program, the two program benefits must be granted concurrently for any prop-**  
 31 **erty.**

32 **(d) The city, county or port may adopt any other provisions relating to the property tax**  
 33 **incentive programs that do not conflict with the requirements of sections 1 to 7 of this 2016**  
 34 **Act.**

35 **(4)(a) The city, county or port may amend or repeal an ordinance or resolution adopted**  
 36 **under this section at any time.**

37 **(b) Notwithstanding paragraph (a) of this subsection, property that is receiving a tax in-**  
 38 **centive program benefit under this section when the ordinance or resolution is amended or**  
 39 **repealed shall continue to receive the benefit pursuant to the provisions of the ordinance or**  
 40 **resolution in effect when the property was initially granted the benefit.**

41 **(5)(a) An ordinance or resolution adopted under this section does not become effective**  
 42 **unless the rates of taxation of the taxing districts located within territory of the city, county**  
 43 **or port whose governing boards agree to the property tax incentive programs, when com-**  
 44 **bined with the rate of taxation of the city, county or port that adopted the ordinance or re-**  
 45 **solution, equal 51 percent or more of the total combined rate of taxation within the territory**

1 of the city, county or port.

2 (b) If an ordinance or resolution becomes effective pursuant to paragraph (a) of this  
 3 subsection, the property tax incentive programs shall be effective for the tax levies of all  
 4 taxing districts in which a brownfield that is granted a property tax incentive program ben-  
 5 efit is located.

6 **SECTION 2.** (1)(a) The owner of a brownfield seeking a property tax incentive program  
 7 benefit for the brownfield or improvements and personal property on the brownfield under  
 8 an ordinance or resolution adopted pursuant to section 1 of this 2016 Act must file an appli-  
 9 cation, with the governing body of the city, county or port that adopted the ordinance or  
 10 resolution, on or before March 15 preceding the beginning of the property tax year for which  
 11 the property tax incentive program benefit is sought. A single application may be filed for  
 12 brownfields in contiguous tax accounts under common ownership.

13 (b) Notwithstanding paragraph (a) of this subsection, an application may be filed after  
 14 March 15 and on or before December 31 if the application is accompanied by a late filing fee  
 15 equal to the greater of \$200 or one-tenth of one percent of the real market value of the  
 16 property to which the application relates as of the assessment date for that tax year.

17 (2) An application filed pursuant to this section must include:

18 (a) The address of the brownfield.

19 (b) Documentation showing the ownership of the property by the person filing the appli-  
 20 cation.

21 (c) An affidavit signed by the owner of the brownfield under penalty of perjury that the  
 22 owner has not, by any acts or omissions, caused, contributed to or exacerbated the release  
 23 of a hazardous substance at the brownfield for which the eligible costs, as determined under  
 24 section 3 of this 2016 Act, are to be incurred, unless the acts or omissions were in material  
 25 compliance with applicable laws, standards, regulations, licenses or permits.

26 (d) Documentation showing that all applicable eligibility requirements have been met.

27 (e) Documentation of estimated eligible costs with respect to the brownfield prepared by  
 28 the Department of Environmental Quality or by a person unrelated to the owner of the  
 29 brownfield and having expertise in estimating such costs.

30 (f) An application fee, if any, required by the city, county or port.

31 (3) The application shall be reviewed by the city, county or port. Upon request, the De-  
 32 partment of Environmental Quality may consult with the city, county or port regarding re-  
 33 medial action costs included in the application as eligible costs. The city, county or port may  
 34 consult with the owner of the brownfield about the application, and the owner may amend  
 35 the application.

36 (4)(a) If the city, county or port determines that the application does not meet the re-  
 37 quirements of this section, the city, county or port shall promptly notify the owner of the  
 38 brownfield in writing that the application is not approved, stating the reasons for the deter-  
 39 mination. A determination under this paragraph is not reviewable, but the owner of the  
 40 brownfield may file an application under this section for any subsequent year.

41 (b) If the city, county or port determines that the application meets the requirements  
 42 of this section, the city, county or port shall promptly:

43 (A) Notify the owner of the brownfield in writing that the application is approved; and

44 (B) Notify the county assessor in writing that the application is approved and certifying  
 45 the period for which the property tax incentive program benefit is granted and the estimated

1 eligible costs with respect to the brownfield.

2 **SECTION 3.** (1) For purposes of sections 1 to 7 of this 2016 Act, eligible costs equal the  
 3 discounted present value of estimated after-tax costs directly related to the remaining work  
 4 necessary to remove, contain or treat the contamination of a brownfield.

5 (2) Eligible costs may include:

6 (a) Remedial action costs as defined in ORS 465.200, including costs for environmental  
 7 site assessment or investigation performed by a geologist or professional engineer without  
 8 the oversight or approval of the Department of Environmental Quality.

9 (b) The costs of demolishing existing improvements on the brownfield as necessary for  
 10 removal or remedial action, as those terms are defined in ORS 465.200.

11 (c) The costs of abating the release of hazardous substances within existing improve-  
 12 ments on the brownfield.

13 (d) The costs of new improvements constructed on the brownfield for the purpose of  
 14 containing hazardous substances or limiting exposure to the release of hazardous substances.

15 (e) The costs of managing, handling, removing, treating and disposing of solid waste,  
 16 environmental media and building materials containing hazardous substances in the course  
 17 of redeveloping the brownfield.

18 (f) The costs of environmental audits, surety bonds, insurance, engineering and legal fees  
 19 and monitoring other than water monitoring.

20 (3) For purposes of section 2 (2)(e) of this 2016 Act, documentation of eligible costs may  
 21 include, but is not limited to, bids, cost estimates, remediation plans, copies of contracts,  
 22 notes and minutes of contract negotiations, and accounts, invoices, sales receipts and other  
 23 payment records of purchases, sales, leases and other transactions relating to the eligible  
 24 costs.

25 (4) Eligible costs shall be reduced by the amount of any state, federal or other grant  
 26 moneys, tax credits, insurance proceeds or legal settlements received by the owner of the  
 27 brownfield to offset eligible costs for the brownfield.

28 **SECTION 4.** (1)(a) For the first property tax year of the period for which special assess-  
 29 ment is certified under section 2 of this 2016 Act for land constituting a brownfield, the  
 30 county assessor shall list on the assessment and tax roll a specially assessed value for the  
 31 land that equals the real market value the land would have if it were not a brownfield less  
 32 the eligible costs determined under section 3 of this 2016 Act and apportioned to each tax  
 33 account included in the application. The specially assessed value of the land determined un-  
 34 der this subsection shall be listed on the assessment and tax rolls for the number of years  
 35 certified for the land under section 2 of this 2016 Act.

36 (b) Notwithstanding paragraph (a) of this subsection, the specially assessed value of the  
 37 land may not be less than \$100 for any property tax year.

38 (2)(a) For the first property tax year for which the land is specially assessed, the maxi-  
 39 mum assessed value of the land shall equal the specially assessed value of the land deter-  
 40 mined under subsection (1) of this section multiplied by the ratio, not greater than 1.00, of  
 41 the average maximum assessed value divided by the average real market value, as those  
 42 terms are defined in ORS 308.149.

43 (b) For each property tax year after the first property tax year for which the land is  
 44 specially assessed, the maximum assessed value of the land shall equal the greater of 103  
 45 percent of the assessed value of the land from the prior year or 100 percent of the maximum

1 assessed value of the land from the prior year.

2 (3) For each property tax year for which the land is specially assessed, the assessed value  
3 of the land shall equal the least of:

4 (a) The specially assessed value of the land as determined under subsection (1) of this  
5 section;

6 (b) The maximum assessed value of the land as determined under subsection (2) of this  
7 section; or

8 (c) The real market value of the land as of the assessment date for the tax year.

9 (4) The entitlement of land to the special assessment provisions of this section shall be  
10 determined as of July 1. If the land becomes disqualified on or after July 1, the land shall  
11 be specially assessed for the property tax year as provided in this section.

12 (5) Each year the county assessor shall add to the assessment and tax rolls of the county,  
13 with respect to land specially assessed under this section, the notation "potential additional  
14 tax."

15 **SECTION 5.** (1) An ordinance or resolution adopted under section 1 of this 2016 Act pro-  
16 viding for exemption or partial exemption of improvements and personal property on a  
17 brownfield must state the percentage of the exemption to be applied to the real market value  
18 of the improvements and personal property.

19 (2) The exemption or partial exemption shall apply to new or existing property of any  
20 classification under rules established by the Department of Revenue pursuant to ORS 308.215  
21 (1)(a)(C).

22 (3) ORS 307.032 applies to improvements and personal property granted partial exemption  
23 under the ordinance or resolution.

24 (4) Each year the county assessor shall add to the assessment and tax rolls of the county,  
25 with respect to the improvements and personal property granted exemption or partial ex-  
26 emption under this section, the notation "potential additional tax."

27 **SECTION 6.** (1) Each year, on or before a date prescribed by the city, county or port that  
28 adopted the ordinance or resolution under section 1 of this 2016 Act, pursuant to which land  
29 constituting a brownfield is specially assessed, the owner of the land shall submit documen-  
30 tation of actual eligible costs incurred and an updated estimate of the remaining eligible  
31 costs to the city, county or port, as applicable.

32 (2) If the estimate of remaining eligible costs is greater or less than the prorated re-  
33 maining amount of eligible costs, the city, county or port shall submit the documentation  
34 and updated estimate to the assessor of the county in which the land is located and the  
35 county assessor shall recompute the specially assessed value and maximum assessed value  
36 of the land under section 4 of this 2016 Act. The recomputed values shall apply to the re-  
37 maining period for which the land has been granted the special assessment.

38 **SECTION 7.** (1) Property that is granted a property tax incentive program benefit pur-  
39 suant to an ordinance or resolution adopted under section 1 of this 2016 Act shall continue  
40 to receive the benefit until the property is disqualified by the earliest of:

41 (a) The expiration of the period for which the benefit was certified under section 2 of this  
42 2016 Act.

43 (b) The discovery by the city, county or port that the owner of the brownfield has failed  
44 to:

45 (A) Comply with the eligibility requirements adopted by the city, county or port;

1 (B) Begin or make reasonable progress on remediation or redevelopment of the  
2 brownfield; or

3 (C) File any required reports.

4 (c) The discovery by the city, county or port that any statement or representation in any  
5 documentation filed pursuant to section 2 of this 2016 Act was misleading or false.

6 (2) Upon disqualification of property from special assessment or exemption or partial  
7 exemption, the property shall be assessed and taxed under ORS 308.146.

8 (3) Upon disqualification of land constituting a brownfield from special assessment under  
9 subsection (1)(b) or (c) of this section, in addition to any other remedy provided by law, there  
10 shall be added to the tax extended against the land on the next assessment and tax roll, to  
11 be collected and distributed in the same manner as other property taxes, additional taxes  
12 equal to the potential additional taxes noted on the roll for the land for all years for which  
13 the land was specially assessed under section 4 of this 2016 Act.

14 (4) Upon disqualification of improvements or personal property on land constituting a  
15 brownfield from exemption or partial exemption under subsection (1)(b) or (c) of this section,  
16 there shall be added to the tax extended against the improvements or personal property on  
17 the next assessment and tax roll, to be collected and distributed in the same manner as other  
18 property taxes, additional taxes, equal to the difference between the taxes assessed against  
19 the property and the taxes that otherwise would have been assessed against the property if  
20 the property had not been granted exemption or partial exemption, for all years for which  
21 the property was granted exemption or partial exemption.

22 (5) Additional taxes collected under this section shall be deemed to have been imposed in  
23 the year to which the additional taxes relate.

24 (6) The amount of additional taxes determined to be due under this section may be paid  
25 to the tax collector prior to the completion of the next assessment and property tax roll  
26 pursuant to ORS 311.370.

27 **SECTION 8.** (1) Sections 1 to 7 of this 2016 Act are repealed on January 2, 2037.

28 (2) Notwithstanding subsection (1) of this section, property that has been granted a  
29 property tax incentive program benefit under sections 1 to 7 of this 2016 Act before the date  
30 specified in subsection (1) of this section, shall continue to receive the benefit for the period  
31 of time for which the benefit was granted.

32 **SECTION 9.** This 2016 Act takes effect on the 91st day after the date on which the 2016  
33 regular session of the Seventy-eighth Legislative Assembly adjourns sine die.

34