

Explanations of legislative housekeeping changes to enterprise zone exemption statutes (property tax)

LONG-TERM (7- TO 15-YEAR) EXEMPTION OF RURAL ENTERPRISE ZONE FACILITIES

HOUSE BILL 2833 (2017) AS INTRODUCED	EXPLANATION, COMMENT REGARDING ISSUES WITH INTERPRETATION, ADMINISTRATIVE AND BETTER ESTABLISHING INTENT
Page 15, lines 31 & 32	Corrects oversight in ORS 285C.412(1)(c) that confounds the common understanding of whether all facility employees must receive compensation averaging 150% or more of the county average annual wage during the remaining years of tax exemption, after the requirement is first met (by the fifth year following the commencement of facility operations). A literal but counterintuitive reading of the current language could lead to the interpretation that compensation might merely exceed the county wage level (> 100%) after initial satisfaction. Though only much more recently recognized, this oversight dates back to when elements of the original law (Ch. 835, Oregon Laws 1997) were restated in different places by Ch. 292, Oregon Laws 2001. Consistency with terminology elsewhere in the section is also achieved.

STANDARD (3- TO 5-YEAR) EXEMPTION ON QUALIFIED ENTERPRISE ZONE PROPERTY

HOUSE BILL 2833 (2017) AS INTRODUCED	EXPLANATION, COMMENT REGARDING ISSUES WITH INTERPRETATION, ADMINISTRATIVE AND BETTER ESTABLISHING INTENT
Page 2, lines 12–14 & lines 21–25	Reword provisions for local preauthorization conferencing that occurs after a business firm submits its (pre-project) application for authorization, in order to be generally clearer and tighter, such as specifying the affected county assessor, as well as substituting “conference” consistently for “consultation” (which is used elsewhere in the statutes for different purposes). ORS 285C.140(4) & (5).
Page 3, lines 10 & 11	Prevent unintended but possible consequence whereby a special exception under ORS 285C.140(11) for late submission of an authorization application would be precluded for property that was taxed while it was being constructed; construction-in-process exemptions are not necessarily a given.
Page 3, lines 37–39, 44 & 45, page 4, line 1 Page 12, lines 4, 5, 14, 15, 20, 21 & 35	Substitute the investment cost of qualified property for real market value (RMV) in special cases where RMV is the basis of a late filing or other fee (at ≤ 0.1% of RMV). In such cases, the exact amount of RMV is not effectively determined until months after the fee is supposed to be collected. Existing provisions unduly complicate implementation of these filing fee provisions. Total cost of property and its initial RMV are usually very similar if not the same. This change entails conforming deletions and so forth, in addition to ORS 285C.165(3) and 285C.220(7) & (8).
Page 6, lines 5 & 6	Clarify in ORS 285C.185(4)(a) that with respect to specific qualifying property, the sponsor election to allow eligibility of hotel/resort businesses does not need to be made by the entire sponsor – or in effect, be zone-wide – but consistent with (later) language in ORS 285C.070, eligible areas might be restricted to the jurisdiction of certain city or county cosponsors.

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Page 6, lines 27–31	Make the terminology more precise, as well as consistent with elsewhere in the statutory series, with respect to the basic requirement for an authorized business firm to increase its employment inside the enterprise zone, in order to initially qualify and start the exemption, as expressed in ORS 285C.200(1)(c).
Page 6, lines 35 & 36	Replace “and” with “or” in reference to provisions regulating employment respective to the transfer of operations into an enterprise zone from elsewhere in Oregon, in that the two provisions (beyond/within 30 miles) would not both be applicable. ORS 285C.200(1)(d).
Page 7, lines 20 & 21	Specify that the prohibition on the transfer of operations into the enterprise zone, for which employment is curtailed more than 30 miles from the zone boundary, applies only to operations that might otherwise be eligible for exemption (not the movement of strictly retail activities, for example). In addition, transferring operations and jobs only to the particular zone in question is what matters (not to just any zone). Currently section (5) of ORS 285C.200.
Page 7, line 44	Change preposition to emphasize that requisite business employment is generally counted zone-wide.
Page 8, lines 3–45, and page 9, lines 1–32 (§6), with conforming changes on page 4, lines 17–26, page 6, line 27, page 7, lines 3–9, page 9, lines 34 & 35, page 10, lines 32–36 and page 13, line 34	<p>Thorough revision to 2010 legislative language in ORS 285C.203 (§6), with conforming modifications in other sections. Replacement text here is nearly identical to House Bill 3043 (2011). In the event of a future economic recession, these changes are critical, so that this statute might make sense and be effectively implemented, in that its premise is complicated enough.</p> <p>This revision more explicitly expresses and retains the intent of the 2010 language, which was technically very challenging to operationalize and for legal interpretation. That intent was a temporary (two-year) reprieve of a business firm’s using the enterprise zone and its tax benefit—by resolution of local zone sponsoring government(s)—in the case of a relatively large project that might be otherwise disqualified, because the firm had reduced its enterprise zone employment during recessionary times, which are defined based on the concurrence of statewide decline in employment and relatively high county unemployment rate. Both the 2010 language and the new text here allow the sponsor also to reduce the required zone employment level of the business going forward after the period when the tax exemption is suspended.</p> <p>In comparison to HB 3043 (2011, §1), sub-paragraph (2)(d)(B) is tightened up, including removal of redundant sub-sub-paragraph (ii), and insertion of “but not limited to” phrase, so that other potentially applicable criteria for qualification (for example, transfer of operations) would remain enforceable.</p>

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Page 9, lines 37–45, and page 10, lines 1–31	<p>Make the language in ORS 285C.210 more specific, plainer, less redundant and more consistent with other statutes, as well as internally, for requirements of the business firm’s maintaining increased employment and not substantially curtailing its jobs in the enterprise zone during the exemption period. This includes:</p> <ul style="list-style-type: none"> · issues raised in Hynix v. Lane County TC-MD 091320E, namely, to clarify proper timing of how a disqualifying event is exactly triggered by a drastic drop in a business firm’s total employment, with respect to annual claim filing requirements, which are anywhere from 9 to 15 months apart; · confirmation that what is reported with the initial exemption claim also matters in terms of potentially the highest level of total employment achieved, against which a drastic drop in zone employment may be compared – lines 13 to 16, page 10, and · correction of original drafting error citing wrong subsection – (2)(c)(B) rather than (1)(c) – lines 17 to 19, page 10.
Page 11, lines 36–42	<p>Clarify that necessary communication between county assessors and the Department of Revenue (valuations staff) can be accomplished other than through actual copies of forms, with respect to the exemption claims filed by business firms at the local, state or both levels for property that is in service. This will help facilitate fuller implementation of these provisions, as well as sharing of data, so that both levels are not necessarily deprived of critical information. ORS 285C.220(5) & (6).</p>
Page 11, lines 43 & 45, and page 12, lines 1 & 2	<p>Confirm arguable interpretation respective to the allowance in ORS 285C.220(7) for late filing of an exemption claim by June 1 rather than April 1 (with a fee), when there is completed qualified property to exempt, so that the allowance also covers the case, in which the claim is filed a year late with loss of the exemption period’s first year. Redundancy and other imprecisions are also removed.</p>
Page 12, lines 22–27	<p>Affirm interpretation regarding current subsection (10) of ORS 285C.220, which allows for an initial (post-project) exemption claim to be filed a year late with loss of the exemption period’s first year, so that consistent with ORS 285C.200 and other provisions, the business firm must have met employment and other material requirements by the time of the regularly applicable due date for filing of April 1 in the prior year—only timely paperwork was lacking.</p>

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Page 13, lines 2–4	Revise wording in ORS 285C.225(3)(b), so that it works more exactly and consistently with terminology elsewhere in statutes. Most importantly, this would avoid unintentionally giving a business firm/taxpayer more years, in which to start exemptions under the same authorization, in relation to the very late filing provision with loss of the exemption period's first year, as provided in current subsection (10) of ORS 285C.220.
Page 13, line 20	Better, more applicable reference.
Page 13, lines 24 & 25	Use more definite/direct language in reference to the actual business firm, the affected county assessor and so forth with respect to notice of noncompliance or disqualifying events under ORS 285C.240(1).
Page 14, lines 4–7	Besides making the effect of the statute here more plain and actively worded, this change also resolves issues raised in Hynix v. Lane County TC-MD 091320B , primarily, that disqualification due to noncompliance is not limited to just a single subsequent year. ORS 285C.240(3)(a).
Page 14, lines 22 & 23	Clarify that the penalty for noncompliance in the absence of timely notice is not supposed to somehow surcharge taxes to have been paid in future (but unrealized) years of the exemption, and eliminate redundancy of "add" and "additional" in second clause. ORS 285C.240(4)(b).
Page 14, lines 34 & 35	Clarify what is effectively the case under ORS 285C.240(6), when it comes to the local zone sponsor's collecting a one-time, one-year repayment from a business firm in lieu of full disqualification of the entire exemption period. In practice, of course, sponsors are pleased to accept an amount of money equal to the year's tax savings, as well as help the business during a presumably temporary drop in requisite zone employment. Nevertheless, the sponsor's facilitation in these cases is technically if implicitly not required, and at times, it might be deemed imprudent or not worth the trouble. This change makes the implicit explicit.