

A-Engrossed
House Bill 2518

Ordered by the House March 26
Including House Amendments dated March 26

Sponsored by Representative HELM, Senator FREDERICK; Representatives CAMPOS, KROPP, MARSH, PHAM, PRUSAK, RUIZ (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.

Establishes program to make forgivable loans to reimburse private owner or operator of brownfield for eligible costs incurred in completion of removal or remedial action at brownfield.

Requires Oregon Business Development Department to consider means to encourage participation in reimbursable removal and remedial actions by minority-owned and woman-owned businesses **and emerging small businesses**. Requires department to submit report to interim committees of Legislative Assembly related to economic development setting forth recipients of forgivable loans and third parties with which recipients contracted to complete removal and remedial actions with respect to which forgivable loans were made.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to brownfields; and prescribing an effective date.

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

4 **SECTION 1. Sections 2 to 7 of this 2021 Act are added to and made a part of ORS chapter**
5 **285A.**

6 **SECTION 2. As used in sections 2 to 7 of this 2021 Act, unless the context requires oth-**
7 **erwise:**

8 (1) **"Affordable housing" means:**

9 (a) **Rental housing that is occupied by households with incomes equal to or less than 60**
10 **percent of the median income for the county or the state, whichever is higher, adjusted for**
11 **family size; or**

12 (b) **Owner-occupied housing occupied by households earning not more than the area me-**
13 **dian income, adjusted for family size.**

14 (2) **"Brownfield" has the meaning given that term in ORS 285A.185.**

15 (3)(a) **"Eligible costs" includes:**

16 (A) **Remedial action costs, including costs for a site evaluation, a preliminary assess-**
17 **ment, a confirmation of release or a remedial investigation that is performed by a geologist**
18 **or professional engineer without the oversight or approval of the Department of Environ-**
19 **mental Quality; and**

20 (B) **If required by a government agency to implement a removal or remedial action, the**
21 **costs of:**

22 (i) **Demolishing existing improvements on a brownfield;**

23 (ii) **Abating the release of hazardous substances within existing improvements on a**

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 **brownfield;**

2 (iii) **Constructing new improvements on a brownfield for the purpose of containing haz-**
3 **ardous substances or limiting exposure to the release of hazardous substances; and**

4 (iv) **Managing, handling, removing, treating and disposing of solid waste, environmental**
5 **media and building materials containing hazardous substances in the course of redeveloping**
6 **a brownfield.**

7 (b) **“Eligible costs” does not include:**

8 (A) **Costs funded by any state or federal grants for environmental site investigation or**
9 **remedial action that are awarded for the same property;**

10 (B) **The cost of remedial action conducted at a site that is listed or proposed to be listed**
11 **as a national priority pursuant to the Comprehensive Environmental Response, Compen-**
12 **sation, and Liability Act of 1980 (42 U.S.C. 9605) and for which the owner or operator is liable**
13 **under 42 U.S.C. 9607;**

14 (C) **Tax credits, insurance proceeds or amounts received as the result of a legal settle-**
15 **ment agreement; or**

16 (D) **Costs that the owner or operator would have incurred if the property were not a**
17 **brownfield.**

18 (4) **“Forgivable loan” includes additional loans made for enhancements listed in section**
19 **3 (3) of this 2021 Act.**

20 (5)(a) **“Owner or operator” means any person who owns, leases, operates, controls or**
21 **exercises significant control over the operation of a brownfield.**

22 (b) **“Owner or operator” does not include a person who, without participating in the**
23 **management of a brownfield, holds indicia of ownership primarily to protect a security in-**
24 **terest in a property.**

25 (6) **“Release,” “remedial action,” “remedial action costs” and “removal” have the**
26 **meanings given those terms in ORS 465.200.**

27 **SECTION 3. (1) The Oregon Business Development Department shall establish and ad-**
28 **minister a program in accordance with sections 2 to 7 of this 2021 Act under which the de-**
29 **partment may make forgivable loans for the purpose of reimbursing private owners or**
30 **operators for the eligible costs incurred in the completion of removal or remedial actions at**
31 **brownfields.**

32 (2)(a) **Forgivable loans may be made in amounts up to the lesser of:**

33 (A) **Fifty percent of the eligible costs incurred by the owner or operator with respect to**
34 **a brownfield; or**

35 (B) **\$250,000.**

36 (b) **Additional forgivable loans may be made to the owner or operator for up to two of**
37 **the enhancements described in subsection (3) of this section with respect to the brownfield**
38 **for which a forgivable loan is made under paragraph (a) of this subsection.**

39 (c) **The total amount of loans that may be made under paragraphs (a) and (b) of this**
40 **subsection is the lesser of:**

41 (A) **One hundred percent of the eligible costs incurred by the owner or operator with**
42 **respect to the brownfield; or**

43 (B) **\$500,000.**

44 (3) **A forgivable loan enhancement may be made in an amount equal to the lesser of 25**
45 **percent of the eligible costs incurred by the owner or operator with respect to the brownfield**

1 or \$125,000 if:

2 (a) The brownfield is in a location identified in an electric vehicle infrastructure plan
3 developed by the Department of Transportation and will be operated as a publicly accessible
4 charging station for electric vehicles immediately after completion.

5 (b)(A) Housing will be constructed or redeveloped from existing improvements on the
6 brownfield;

7 (B) At least four dwelling units, or 20 percent of all dwelling units, whichever is greater,
8 will be used as affordable housing; and

9 (C) Such use is ensured by a deed restriction on the brownfield that:

10 (i) Is enforceable by the city or county in which the brownfield is located and by the de-
11 partment; and

12 (ii) Is to last for at least 30 consecutive years following completion of the housing.

13 (c) The brownfield is located in:

14 (A) A census tract in which at least 20 percent of the residents are below the federal
15 poverty line as determined under 42 U.S.C. 9902, as amended and in effect on December 31,
16 2020; or

17 (B) A rural area or a distressed area.

18 (d) At least 50 percent of the brownfield will be permanently dedicated as natural areas
19 or public parks by a deed restriction on the brownfield that is enforceable by the city or
20 county in which the brownfield is located and by the department.

21 (e) The brownfield is located in an area designated as having unmet health care needs in
22 the most recent unmet need designation report by the Office of Rural Health and on which
23 hospital buildings or community health care facilities are subsequently constructed.

24 (f) The brownfield is a developed site that became a brownfield as a direct result of
25 wildfire.

26 **SECTION 4.** (1) An owner or operator of a brownfield seeking a forgivable loan, including
27 any enhancements, under section 3 of this 2021 Act must submit to the Oregon Business
28 Development Department an application in a form prescribed by the department, including:

29 (a) An affidavit signed under penalty for false swearing that the applicant has not, by any
30 acts, or omissions where there was a duty to act, caused, contributed to or exacerbated the
31 release of a hazardous substance at the brownfield to which the application relates;

32 (b) A statement that the applicant has entered into a voluntary agreement, cost recovery
33 agreement, consent judgment or consent order with the Department of Environmental
34 Quality for removal or remedial action at the brownfield subject to oversight by the De-
35 partment of Environmental Quality;

36 (c) An estimate of the type and amount of eligible costs the applicant expects to incur
37 in investigating and remediating the brownfield;

38 (d) A description of any enhancements listed in section 3 (3) of this 2021 Act that will
39 apply to the brownfield; and

40 (e) Any other information the Oregon Business Development Department considers nec-
41 essary or useful to the administration of the program.

42 (2)(a) Once the Oregon Business Development Department has determined that an ap-
43 plication is complete, the department shall approve or reject the application.

44 (b) Rejection of an application does not preclude the owner or operator from reapplying
45 at any time with respect to the same or another brownfield.

1 (c) If the department approves an application, the department shall determine the
2 amount of the forgivable loan, including any enhancements, and disburse the loan proceeds
3 to the applicant pursuant to a loan agreement entered into by the department and the owner
4 or operator.

5 (d) Rejection of an application and the amount of a forgivable loan may not be appealed.

6 **SECTION 5.** (1) A forgivable loan made under section 4 of this 2021 Act shall be forgiven
7 upon submission by the owner or operator of all documentation required by the Oregon
8 Business Development Department, including, but not limited to, an affidavit signed under
9 penalty for false swearing:

10 (a) Stating that the owner or operator has completed performance under the voluntary
11 agreement, cost recovery agreement, consent judgment or consent order described in section
12 4 (1)(b) of this 2021 Act, other than the performance of long term water monitoring or
13 compliance with institutional or engineering controls;

14 (b) Documenting the eligible costs incurred and attesting that the costs have not been
15 reimbursed; and

16 (c) Stating how the applicant has complied with any conditions required for any en-
17 hancement listed in section 3 (3) of this 2021 Act, including recording a deed restriction, for
18 which the applicant received an additional forgivable loan.

19 (2) A forgivable loan may not be forgiven under subsection (1) of this section and shall
20 be repaid over a term of five years, with interest at the rate of _____ percent per annum,
21 if:

22 (a) The removal or remedial action at the brownfield for which the forgivable loan was
23 made is not completed on a schedule set forth in the loan agreement between the department
24 and the owner or operator entered into under section 4 of this 2021 Act; or

25 (b) The owner or operator fails to comply with any condition set forth in the loan
26 agreement.

27 (3) The department may in its discretion allow owners or operators to cure noncompli-
28 ance with performance or other conditions set forth in loan agreements.

29 (4) The department may seek appropriate legal remedies to secure repayment of
30 forgivable loans due the Oregon Brownfield Properties Revitalization Fund established under
31 section 7 of this 2021 Act.

32 (5) Moneys repaid to the department under this section shall be deposited in the Oregon
33 Brownfield Properties Revitalization Fund.

34 **SECTION 6.** The Oregon Business Development Department shall establish by rule the
35 procedures and criteria for administration of the program established under sections 2 to 7
36 of this 2021 Act, including, but not limited to, the methods of determining:

37 (1) The distribution of forgivable loans;

38 (2) The amount of a forgivable loan, including enhancements listed in section 3 (3) of this
39 2021 Act;

40 (3) The terms of forgivable loan enhancements under section 3 (3) of this 2021 Act;

41 (4) The conditions attached to a loan;

42 (5) The circumstances in which forgivable loans must be repaid under section 5 of this
43 2021 Act; and

44 (6) Any means by which noncompliance with applicable performance or other conditions
45 attached to a loan may be cured by the owner or operator.

1 **SECTION 7.** (1) The Oregon Brownfield Properties Revitalization Fund is established in
2 the State Treasury, separate and distinct from the General Fund. Interest earned by the
3 Oregon Brownfield Properties Revitalization Fund shall be credited to the fund. All moneys
4 in the Oregon Brownfield Properties Revitalization Fund are continuously appropriated to
5 the Oregon Business Development Department for the purposes of sections 2 to 7 of this 2021
6 Act.

7 (2) The Oregon Brownfield Properties Revitalization Fund shall consist of all moneys
8 credited to the fund, including but not limited to:

9 (a) Moneys appropriated or transferred to the fund by the Legislative Assembly or the
10 Oregon Business Development Commission;

11 (b) Forgivable loans repaid under section 5 of this 2021 Act and interest due on the
12 moneys;

13 (c) Amounts donated to the fund;

14 (d) Moneys transferred to the fund from the federal government, state agencies or local
15 governments;

16 (e) Lottery bond proceeds allocated by the Legislative Assembly for deposit in the fund;

17 (f) Earnings received on moneys in the fund; and

18 (g) Other amounts transferred to the fund from any source.

19 **SECTION 8.** (1) The Oregon Business Development Department shall consider means by
20 which the department can encourage participation in removal and remedial actions that are
21 eligible for forgivable loans under sections 2 to 7 of this 2021 Act by minority-owned busi-
22 nesses, woman-owned businesses and emerging small businesses as those terms are defined
23 in ORS 200.005.

24 (2) No later than January 1, 2023, the department shall submit a report in the manner
25 provided in ORS 192.245 to the interim committees of the Legislative Assembly related to
26 economic development that sets forth in detail the recipients of forgivable loans under sec-
27 tion 5 of this 2021 Act and any third parties with which the recipients contracted to complete
28 the removal and remedial actions with respect to which the forgivable loans were made.

29 **SECTION 9.** Section 8 of this 2021 Act is repealed on January 2, 2023.

30 **SECTION 10.** There is appropriated to the Oregon Business Development Department, for
31 the biennium beginning July 1, 2021, out of the General Fund, the amount of \$5,000,000 for
32 the purpose of carrying out the provisions of sections 2 to 7 of this 2021 Act.

33 **SECTION 11.** This 2021 Act takes effect on the 91st day after the date on which the 2021
34 regular session of the Eighty-first Legislative Assembly adjourns sine die.

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