

Enrolled
House Bill 2518

Sponsored by Representative HELM, Senator FREDERICK; Representatives BYNUM, CAMPOS, DEXTER, HAYDEN, HOLVEY, KOTEK, KROPF, MARSH, MCLAIN, NERON, PHAM, PRUSAK, REYNOLDS, RUIZ, SANCHEZ, SOLLMAN, VALDERRAMA, WILLIAMS (Pre-session filed.)

CHAPTER

AN ACT

Relating to brownfields; and prescribing an effective date.

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

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

SECTION 2. As used in sections 2 to 7 of this 2021 Act, unless the context requires otherwise:

(1) “Affordable housing” means:

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

(b) Owner-occupied housing occupied by households earning not more than the area median income, adjusted for family size.

(2) “Brownfield” has the meaning given that term in ORS 285A.185.

(3)(a) “Eligible costs” includes:

(A) Remedial action costs, including costs for a site evaluation, a preliminary assessment, a confirmation of release or a remedial investigation that is performed by a geologist or professional engineer without the oversight or approval of the Department of Environmental Quality; and

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

(i) Demolishing existing improvements on a brownfield;

(ii) Abating the release of hazardous substances within existing improvements on a brownfield;

(iii) Constructing new improvements on a brownfield for the purpose of containing hazardous substances or limiting exposure to the release of hazardous substances; and

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

(b) “Eligible costs” does not include:

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

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

(C) Tax credits, insurance proceeds or amounts received as the result of a legal settlement agreement; or

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

(4) "Forgivable loan" includes additional loans made for enhancements listed in section 3 (3) of this 2021 Act.

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

(b) "Owner or operator" does not include a person who, without participating in the management of a brownfield, holds indicia of ownership primarily to protect a security interest in a property.

(6) "Release," "remedial action," "remedial action costs" and "removal" have the meanings given those terms in ORS 465.200.

SECTION 3. (1) The Oregon Business Development Department shall establish and administer a program in accordance with sections 2 to 7 of this 2021 Act under which the department may make forgivable loans for the purpose of reimbursing private owners or operators for the eligible costs incurred in the completion of removal or remedial actions at brownfields.

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

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

(B) \$250,000.

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

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

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

(B) \$500,000.

(3) A forgivable loan enhancement may be made in an amount equal to the lesser of 25 percent of the eligible costs incurred by the owner or operator with respect to the brownfield or \$125,000 if:

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

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

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

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

(i) Is enforceable by the city or county in which the brownfield is located and by the department; and

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

(c) The brownfield is located in:

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

(B) A rural area or a distressed area.

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

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

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

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

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

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

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

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

(e) Any other information the Oregon Business Development Department considers necessary or useful to the administration of the program.

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

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

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

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

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

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

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

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

(2) A forgivable loan may not be forgiven under subsection (1) of this section and shall be repaid over a term of five years, with interest at the current primary credit rate of the discount window program of the United States Federal Reserve System plus three percent per annum, if:

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

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

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

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

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

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

(1) The distribution of forgivable loans;

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

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

(4) The conditions attached to a loan;

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

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

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

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

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

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

(c) Amounts donated to the fund;

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

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

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

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

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

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

SECTION 9. Section 8 of this 2021 Act is repealed on January 2, 2023.
SECTION 10. There is appropriated to the Oregon Business Development Department, for the biennium beginning July 1, 2021, out of the General Fund, the amount of \$5,000,000 for the purpose of carrying out the provisions of sections 2 to 7 of this 2021 Act.
SECTION 11. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by House June 22, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 24, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State