

Enrolled House Bill 4084

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

CHAPTER

AN ACT

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

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

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

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

(b) Exemption or partial exemption of improvements and personal property on land described in paragraph (a) of this subsection.

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

(A) That the owner or authorized representative of the owner has obtained, as applicable, a site evaluation, preliminary assessment, confirmation of release or remedial investigation of the brownfield prepared by a geologist registered under ORS 672.505 to 672.705 or a professional engineer as defined in ORS 672.002.

(B) If the site evaluation, preliminary assessment, confirmation of release or remedial investigation required under subparagraph (A) of this paragraph concludes that a remedial action, as defined in ORS 465.200, is required in response to the release of a hazardous substance at the brownfield, that the remedial action shall be conducted pursuant to an agreement with, an order of or a program or process authorized by the Department of Environmental Quality under ORS 465.200 to 465.455 and 465.900.

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

(D) That the report of the site evaluation, preliminary assessment, confirmation of release or remedial investigation required under subparagraph (A) of this paragraph, and a report prepared by a geologist or professional engineer showing that any remedial action has complied with any applicable agreement, order, program or process authorized by the department and with any other applicable state law administered by the department, have been submitted to the department.

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

- (A) Subject to assessment under ORS 308.505 to 308.681;
- (B) State-appraised industrial property as defined in ORS 306.126; or
- (C) A federal Superfund site.

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

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

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

(b) Property may be granted a tax incentive program benefit under this section until the earlier of:

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

(B) The date on which the dollar amount of the benefit equals the eligible costs for the property as determined under section 3 of this 2016 Act.

(c) If a city, county or port adopts both a special assessment and an exemption or partial exemption program, the two program benefits must be granted concurrently for any property.

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

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

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

(5)(a) An ordinance or resolution adopted under this section does not become effective unless the rates of taxation of the taxing districts located within territory of the city, county or port whose governing boards agree to the property tax incentive programs, when combined with the rate of taxation of the city, county or port that adopted the ordinance or resolution, equal 75 percent or more of the total combined rate of taxation within the territory of the city, county or port.

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

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

(b) Notwithstanding paragraph (a) of this subsection, an application may be filed after March 15 and on or before December 31 if the application is accompanied by a late filing fee

equal to the greater of \$200 or one-tenth of one percent of the real market value of the property to which the application relates as of the assessment date for that tax year.

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

(a) The address of the brownfield.

(b) Documentation showing the ownership of the property by the person filing the application.

(c) An affidavit signed by the owner of the brownfield under penalty of perjury affirming that the owner has not, by any acts, or omissions where there is a duty to act, caused, contributed to or exacerbated the release of a hazardous substance at the brownfield for which the eligible costs as determined under section 3 of this 2016 Act are to be incurred.

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

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

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

(3) The application shall be reviewed by the city, county or port. Upon request, the Department of Environmental Quality may consult with the city, county or port regarding remedial action costs included in the application as eligible costs. The city, county or port may consult with the owner of the brownfield about the application, and the owner may amend the application.

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

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

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

(B) Notify the county assessor in writing that the application is approved and certifying the period for which the property tax incentive program benefit is granted and the estimated eligible costs with respect to the brownfield.

(5) The assessor of the county in which the property granted a property tax incentive program benefit is located may charge the owner a fee of up to \$200 for the first year and up to \$100 for each subsequent year for which the benefit is granted to compensate the assessor for duties imposed under sections 1 to 7 of this 2016 Act.

(6) The transfer of the brownfield in an arm's-length transaction shall not disqualify the property from the property tax incentive program benefits granted to the property under the ownership of the transferor provided the transferee:

(a) Notifies the city, county or port and the county assessor as soon as practicable of the transfer;

(b) Files an affidavit described in subsection (2)(c) of this section; and

(c) Complies with all requirements under sections 1 to 7 of this 2016 Act.

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

(2) Eligible costs may include:

(a) Remedial action costs as defined in ORS 465.200, including costs for a site evaluation, preliminary assessment, confirmation of release or remedial investigation performed by a geologist or professional engineer without the oversight or approval of the Department of Environmental Quality.

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

(c) The costs of abating the release of hazardous substances within existing improvements on the brownfield.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 5. (1) An ordinance or resolution adopted under section 1 of this 2016 Act providing for exemption or partial exemption of improvements and personal property on a

brownfield must state the percentage of the exemption to be applied to the real market value of the improvements and personal property.

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

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

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

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

(2)(a) If the updated estimate of the eligible costs is greater or less than the original estimate by 10 percent or more, the city, county or port shall submit the documentation and updated estimate to the assessor of the county in which the land is located.

(b) Upon receipt, the county assessor shall recompute the specially assessed value and maximum assessed value of the land under section 4 of this 2016 Act, beginning with the first year for which the land was granted special assessment.

(c) The values as recomputed under this section shall apply to the remaining period for which the land has been granted the special assessment. Delinquent taxes may not be assessed or collected, and refunds may not be paid, as a consequence of the recomputation under this section for property tax years preceding the remaining period.

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

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

(b) The date on which the dollar amount of the benefit equals the eligible costs for the property as determined under section 3 of this 2016 Act.

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

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

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

(C) File any required reports.

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

(2) The city, county or port may provide an owner with the opportunity to cure the grounds for disqualification under subsection (1) of this section.

(3) The city, county or port shall notify the county assessor of the disqualification of property from special assessment or exemption or partial exemption under this section, and upon disqualification the property shall be assessed and taxed under ORS 308.146.

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

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

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

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

SECTION 8. (1) Sections 1 to 7 of this 2016 Act are repealed on January 2, 2027.

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

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

Passed by House February 19, 2016

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate February 29, 2016

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2016

Approved:

.....M.,....., 2016

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2016

.....
Jeanne P. Atkins, Secretary of State