

D R A F T

SUMMARY

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.

Sunsets 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
4 **Be It Enacted by the People of the State of Oregon:**

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

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

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

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

10 (A) That the owner or authorized representative of the owner has
11 obtained an environmental site assessment of the brownfield prepared
12 by a geologist registered under ORS 672.505 to 672.705 or a professional
13 engineer as defined in ORS 672.002.

14 (B) If the environmental site assessment required under subpara-
15 graph (A) of this paragraph concludes that a remedial action, as de-
16 fined in ORS 465.200, is required in response to the release of a
17 hazardous substance at the brownfield, that the remedial action shall
18 be conducted pursuant to an agreement with, an order of or a program
19 or process authorized by the Department of Environmental Quality.
20 An agreement, order, program or process includes, but is not limited
21 to, the Voluntary Cleanup Program, the Independent Cleanup Path-
22 way, a consent or unilateral order or another process that the de-
23 partment may establish by rule or policy, pursuant to which the owner
24 or operator is required to perform the remedial action at the
25 brownfield.

26 (C) That the owner is in compliance with any agreement, order,
27 program or process governing the conduct of the remedial action un-
28 der subparagraph (B) of this paragraph.

29 (D) That the report of the environmental site assessment required
30 under subparagraph (A) of this paragraph, and a report prepared by a
31 geologist or professional engineer showing that any remedial action

1 **has complied with applicable state law administered by the depart-**
2 **ment, have been submitted to the department.**

3 **(b) Notwithstanding paragraph (a) of this subsection, property is**
4 **not eligible for tax incentive programs adopted pursuant to this sec-**
5 **tion if, at the time an application for the property is filed under sec-**
6 **tion 2 of this 2016 Act, the property is:**

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

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

9 **or**

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

11 **(c) For any property tax year, property granted any other special**
12 **assessment, exemption or partial exemption may not be granted ben-**
13 **efits under a tax incentive program adopted pursuant to this section.**

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

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

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

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

24 **(B) Notwithstanding paragraph (a) of this subsection, the dollar**
25 **amount of the benefit equals the eligible costs for the property as de-**
26 **termined under section 3 of this 2016 Act.**

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

30 **(d) The city, county or port may adopt any other provisions relating**
31 **to the property tax incentive programs that do not conflict with the**

1 requirements of sections 1 to 7 of this 2016 Act.

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

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

9 (5)(a) An ordinance or resolution adopted under this section does
10 not become effective unless the rates of taxation of the taxing districts
11 located within territory of the city, county or port whose governing
12 boards agree to the property tax incentive programs, when combined
13 with the rate of taxation of the city, county or port that adopted the
14 ordinance or resolution, equal 51 percent or more of the total com-
15 bined rate of taxation within the territory of the city, county or port.

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

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

30 (b) Notwithstanding paragraph (a) of this subsection, an application
31 may be filed after March 15 and on or before December 31 if the ap-

1 **plication is accompanied by a late filing fee equal to the greater of \$200**
2 **or one-tenth of one percent of the real market value of the property**
3 **to which the application relates as of the assessment date for that tax**
4 **year.**

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

6 **(a) The address of the brownfield.**

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

9 **(c) An affidavit signed by the owner of the brownfield under penalty**
10 **of perjury that the owner has not, by any acts or omissions, caused,**
11 **contributed to or exacerbated the release of a hazardous substance at**
12 **the brownfield for which the eligible costs, as determined under sec-**
13 **tion 3 of this 2016 Act, are to be incurred, unless the acts or omissions**
14 **were in material compliance with applicable laws, standards, regu-**
15 **lations, licenses or permits.**

16 **(d) Documentation showing that all applicable eligibility require-**
17 **ments have been met.**

18 **(e) Documentation of estimated eligible costs with respect to the**
19 **brownfield prepared by the Department of Environmental Quality or**
20 **by a person unrelated to the owner of the brownfield and having ex-**
21 **pertise in estimating such costs.**

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

23 **(3) The application shall be reviewed by the city, county or port.**
24 **Upon request, the Department of Environmental Quality may consult**
25 **with the city, county or port regarding remedial action costs included**
26 **in the application as eligible costs. The city, county or port may con-**
27 **sult with the owner of the brownfield about the application, and the**
28 **owner may amend the application.**

29 **(4)(a) If the city, county or port determines that the application**
30 **does not meet the requirements of this section, the city, county or**
31 **port shall promptly notify the owner of the brownfield in writing that**

1 the application is not approved, stating the reasons for the determi-
2 nation. A determination under this paragraph is not reviewable, but
3 the owner of the brownfield may file an application under this section
4 for any subsequent year.

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

8 (A) Notify the owner of the brownfield in writing that the applica-
9 tion is approved; and

10 (B) Notify the county assessor in writing that the application is
11 approved and certifying the period for which the property tax incentive
12 program benefit is granted and the estimated eligible costs with re-
13 spect to the brownfield.

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

18 (2) Eligible costs may include:

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

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

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

28 (d) The costs of new improvements constructed on the brownfield
29 for the purpose of containing hazardous substances or limiting expo-
30 sure to the release of hazardous substances.

31 (e) The costs of managing, handling, removing, treating and dis-

1 posing of solid waste, environmental media and building materials
2 containing hazardous substances in the course of redeveloping the
3 brownfield.

4 (f) The costs of environmental audits, surety bonds, insurance, en-
5 gineering and legal fees and monitoring other than water monitoring.

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

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

16 SECTION 4. (1)(a) For the first property tax year of the period for
17 which special assessment is certified under section 2 of this 2016 Act
18 for land constituting a brownfield, the county assessor shall list on the
19 assessment and tax roll a specially assessed value for the land that
20 equals the real market value the land would have if it were not a
21 brownfield less the eligible costs determined under section 3 of this
22 2016 Act and apportioned to each tax account included in the applica-
23 tion. The specially assessed value of the land determined under this
24 subsection shall be listed on the assessment and tax rolls for the
25 number of years certified for the land under section 2 of this 2016 Act.

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

29 (2)(a) For the first property tax year for which the land is specially
30 assessed, the maximum assessed value of the land shall equal the
31 specially assessed value of the land determined under subsection (1)

1 of this section multiplied by the ratio, not greater than 1.00, of the
2 average maximum assessed value divided by the average real market
3 value, as those terms are defined in ORS 308.149.

4 (b) For each property tax year after the first property tax year for
5 which the land is specially assessed, the maximum assessed value of
6 the land shall equal the greater of 103 percent of the assessed value
7 of the land from the prior year or 100 percent of the maximum as-
8 sessed value of the land from the prior year.

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

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

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

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

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

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

24 **SECTION 5.** (1) An ordinance or resolution adopted under section
25 1 of this 2016 Act providing for exemption or partial exemption of im-
26 provements and personal property on a brownfield must state the
27 percentage of the exemption to be applied to the real market value of
28 the improvements and personal property.

29 (2) The exemption or partial exemption shall apply to new or exist-
30 ing property of any classification under rules established by the De-
31 partment of Revenue pursuant to ORS 308.215 (1)(a)(C).

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

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

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

14 **(2) If the estimate of remaining eligible costs is greater or less than**
15 **the prorated remaining amount of eligible costs, the city, county or**
16 **port shall submit the documentation and updated estimate to the**
17 **assessor of the county in which the land is located and the county**
18 **assessor shall recompute the specially assessed value and maximum**
19 **assessed value of the land under section 4 of this 2016 Act. The re-**
20 **computed values shall apply to the remaining period for which the**
21 **land has been granted the special assessment.**

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

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

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

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

1 **(B) Begin or make reasonable progress on remediation or redevelop-**
2 **ment of the brownfield; or**

3 **(C) File any required reports.**

4 **(c) The discovery by the city, county or port that any statement or**
5 **representation in any documentation filed pursuant to section 2 of this**
6 **2016 Act was misleading or false.**

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

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

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

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

31 **(6) The amount of additional taxes determined to be due under this**

1 section may be paid to the tax collector prior to the completion of the
2 next assessment and property tax roll pursuant to ORS 311.370.

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

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

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

13
