

House Bill 2575

Sponsored by Representative MCKEOWN (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 **as introduced**.

Creates tax credit for eligible costs of removal or remedial action at brownfield property. Applies to tax years beginning on or after January 1, 2020, and before January 1, 2026.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to a tax credit for brownfields; creating new provisions; amending ORS 314.752, 315.053 and
3 318.031; and prescribing an effective date.

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

5 **SECTION 1. Sections 2 to 5 of this 2019 Act are added to and made a part of ORS chapter**
6 **315.**

7 **SECTION 2. (1) As used in sections 2 to 5 of this 2019 Act:**

8 (a) "Affordable housing" means:

9 (A) Rental housing that is occupied by households earning up to 60 percent of the area
10 median income, adjusted for family size; or

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

13 (b) "Brownfield property" means a brownfield as defined in ORS 285A.185.

14 (c) "Distressed area" has the meaning given that term in ORS 285A.010.

15 (d) "Eligible costs" includes:

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

19 (B) The costs of demolishing existing improvements on a brownfield property as neces-
20 sary for removal or remedial action.

21 (C) The costs of abating the release of hazardous substances within existing improve-
22 ments on a brownfield property.

23 (D) The costs of new improvements constructed on a brownfield property for the purpose
24 of containing hazardous substances or limiting exposure to the release of hazardous sub-
25 stances.

26 (E) The costs of managing, handling, removing, treating and disposing of solid waste,
27 environmental media and building materials containing hazardous substances in the course
28 of redeveloping a brownfield property.

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

31 (e) "Owner or operator" means any person who owns, leases, operates, controls or ex-

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 **ercises significant control over the operation of a brownfield property. “Owner or operator”**
2 **does not include a person who, without participating in the management of a brownfield**
3 **property, holds indicia of ownership primarily to protect a security interest in a brownfield**
4 **property.**

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

7 (g) **“Rural area” has the meaning given that term in ORS 285A.010.**

8 (h) **“Tax-exempt entity” means a government agency or an organization that is recog-**
9 **nized as exempt under section 501(c)(3) of the Internal Revenue Code.**

10 (2) **A credit against the taxes otherwise due under ORS chapter 316 (or, if the taxpayer**
11 **is a corporation, under ORS chapter 317 or 318) shall be allowed for eligible costs on**
12 **brownfield properties incurred in the tax year. The credit allowed under this section may be**
13 **earned by an owner or operator of a brownfield property, including a local government or**
14 **other tax-exempt entity. Except as provided in subsection (3) of this section, the amount of**
15 **credit allowed shall be 50 percent of eligible costs, but may not exceed \$1 million for any**
16 **brownfield property for which the tax credit application is submitted.**

17 (3) **An owner or operator that has incurred eligible costs may claim an additional 25**
18 **percent of eligible costs for each of the enhancements listed in this subsection, but the total**
19 **allowed under this section for a brownfield property may not exceed the lesser of total eli-**
20 **gible costs or \$2 million. The owner or operator shall be allowed the additional amount for**
21 **the calendar year in which the owner or operator demonstrates any of the following:**

22 (a) **The use of at least 50 percent minority-owned businesses or woman-owned businesses,**
23 **as defined in ORS 200.005, in the completion of work for which eligible costs are claimed;**

24 (b) **Removal or remedial action at a brownfield property located in a census tract where**
25 **at least 20 percent of the residents are below the federal poverty line as determined under**
26 **42 U.S.C. 9902, as amended and in effect on December 31, 2018;**

27 (c) **Construction of housing in which at least 20 percent of the dwelling units are afford-**
28 **able housing and their use as affordable housing is assured by a deed restriction on the**
29 **brownfield property lasting for at least 30 years from the effective date of this 2019 Act and**
30 **enforceable by the local government where the brownfield property is located and by the**
31 **Oregon Business Development Department;**

32 (d) **Removal or remedial action at a brownfield property at least 50 percent of which is**
33 **subsequently permanently protected as natural areas or public parks by a deed restriction**
34 **on the brownfield property enforceable by the local government where the brownfield prop-**
35 **erty is located and by the Oregon Business Development Department;**

36 (e) **Removal or remedial action at a brownfield property located in an area designated as**
37 **having unmet health care needs in the most recent unmet need designation report by the**
38 **Office of Rural Health and on which hospital buildings or community health care facilities**
39 **are constructed; or**

40 (f) **Removal or remedial action at a brownfield property that is zoned for industrial use**
41 **and the industrial use is assured by a deed restriction on the brownfield property lasting for**
42 **at least 30 years from the effective date of this 2019 Act and enforceable by the local gov-**
43 **ernment where the brownfield property is located and by the Oregon Business Development**
44 **Department.**

45 (4) **In order to earn a credit under this section, the owner or operator of a brownfield**

1 property must incur eligible costs and must submit a notarized affidavit or declaration to the
 2 Oregon Business Development Department that the owner or operator:

3 (a) Has not, by any acts, or omissions where there is a duty to act, caused, contributed
 4 to or exacerbated the release of a hazardous substance at the brownfield property for which
 5 the eligible costs as determined under this section are incurred; and

6 (b) Has entered into and is in compliance with a voluntary agreement, consent judgment
 7 or consent order with the Department of Environmental Quality, pursuant to which the
 8 owner or operator is performing or will perform removal or remedial action at the brownfield
 9 property subject to oversight by the department.

10 (5) Prior to the allowance of a credit under this section, the owner or operator shall ob-
 11 tain certification of the amount of the credit by application to the Oregon Business Devel-
 12 opment Department.

13 (6) The owner or operator shall submit an application to the Oregon Business Develop-
 14 ment Department with all documentation required by the department to substantiate the
 15 eligible costs for the brownfield property and shall claim the credit on a form prescribed by
 16 the department that contains the information required by the department.

17 (7) The Oregon Business Development Department may establish by rule procedures and
 18 criteria for administration of the credit, including determining the amount of the tax credit
 19 to be certified under this section. The department shall provide certification to taxpayers
 20 that are eligible to claim the credit under this section.

21 (8) The Oregon Business Development Department may adopt a schedule of reasonable
 22 fees that the department may require of applicants for the administration of credits under
 23 this section. The fees may not exceed the cost to the department of issuing certifications.

24 (9) Any tax credit otherwise allowable under this section that is not used by the taxpayer
 25 in a particular tax year may be carried forward and offset against the taxpayer's tax liability
 26 for the next succeeding tax year. Any credit remaining unused in the next succeeding tax
 27 year may be carried forward and used in the second succeeding tax year, and likewise any
 28 credit not used in that second succeeding tax year may be carried forward and used in the
 29 third succeeding tax year, and any credit not used in that third succeeding tax year may be
 30 carried forward and used in the fourth succeeding tax year, and any credit not used in that
 31 fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year,
 32 but may not be carried forward for any tax year thereafter.

33 (10) In the case of a tax credit allowed under this section:

34 (a) A nonresident shall be allowed the credit under this section in the proportion provided
 35 in ORS 316.117.

36 (b) If a change in the status of the taxpayer from resident to nonresident or from non-
 37 resident to resident occurs, the credit allowed by this section shall be determined in a man-
 38 ner consistent with ORS 316.117.

39 (c) If a change in the tax year of the taxpayer occurs as described in ORS 314.085, or if
 40 the Department of Revenue terminates the taxpayer's tax year under ORS 314.440, the credit
 41 allowed under this section shall be prorated or computed in a manner consistent with ORS
 42 314.085.

43 **SECTION 3.** (1) Under the procedures for a contested case under ORS chapter 183, the
 44 Oregon Business Development Department may order the suspension or revocation of a tax
 45 credit issued or transferred under section 2 or 4 of this 2019 Act if the department finds:

1 (a) The certification was obtained by fraud or misrepresentation;

2 (b) The certification was obtained by mistake or miscalculation;

3 (c) The owner or operator of the brownfield property has failed to construct or operate
4 the project in compliance with the plans, specifications and procedures in the application;

5 (d) The owner or operator has failed to complete performance of a voluntary agreement,
6 consent judgment or consent order as required under section 2 (4)(b) of this 2019 Act; or

7 (e) The taxpayer otherwise violates a provision that allows or provides for administration
8 of a tax credit under section 2 of this 2019 Act.

9 (2) As soon as the order of revocation under this section becomes final, the Oregon
10 Business Development Department shall notify the Department of Revenue, the owner or
11 operator and any transferee under section 4 of this 2019 Act of the order of revocation. Upon
12 notification, the Department of Revenue immediately shall proceed to collect:

13 (a) If no portion of a credit has been transferred, those taxes not paid by the holder of
14 the certification as a result of the tax credits provided to the holder under the revoked cer-
15 tification, from the holder or a successor in interest to the business interests of the holder.
16 All tax credits provided to the holder and attributable to the fraudulently or mistakenly ob-
17 tained certification shall be forfeited.

18 (b) If all of a credit has been transferred, an amount equal to the amount of the tax
19 credits allowable to the transferee under the revoked certification, from the transferor or a
20 successor in interest to the business interests of the transferor.

21 (c) If a portion of a credit has been transferred, those taxes not paid by the transferor
22 as a result of the tax credits provided to the transferor pursuant to the revoked certification,
23 from the transferor or a successor in interest to the business interests of the transferor,
24 and an amount equal to the amount of the tax credits allowable to the transferee pursuant
25 to the revoked certification, from the transferor or a successor in interest to the business
26 interests of the transferor.

27 (3)(a) The Department of Revenue shall have the benefit of all laws of this state per-
28 taining to the collection of income and excise taxes and may proceed to collect the amounts
29 described in subsection (2) of this section from the owner or operator that obtained the tax
30 credit, or any successor in interest to the business interests of that person. An assessment
31 of tax is not necessary and the collection of taxes described in this subsection is not pre-
32 cluded by any statute of limitations.

33 (b) For purposes of this subsection, a local government, lender, bankruptcy trustee or
34 other person that acquires an interest through eminent domain authority by purchase or
35 condemnation, through bankruptcy or through foreclosure of a security interest is not con-
36 sidered to be a successor in interest to the business interests of the person that obtained the
37 tax credit.

38 (4) If a tax credit is ordered revoked pursuant to this section, the holder of the certi-
39 fication shall be denied any further relief in connection with the credit from the date that
40 the order of revocation becomes final.

41 (5) Notwithstanding subsections (1) to (3) of this section, a tax credit or portion of a tax
42 credit held by a transferee under section 4 of this 2019 Act may not be considered revoked
43 for purposes of the transferee, the tax credit allowable to the transferee under section 2 of
44 this 2019 Act may not be reduced, and a transferee is not liable under subsections (2) and (3)
45 of this section.

1 (6) Interest under this section shall accrue at the rate established in ORS 305.220 begin-
 2 ning the day after the due date of the return on which the credit may first be claimed.

3 **SECTION 4.** (1) An owner or operator of a brownfield property that has earned a tax
 4 credit under section 2 of this 2019 Act may transfer all or a portion of the credit to a tax-
 5 payer subject to tax under ORS chapter 316, 317 or 318. A transfer is conditioned upon com-
 6 pliance with this section and ORS 315.052 and 315.053.

7 (2) The Department of Revenue may require that the owner or operator that has earned
 8 the credit and the taxpayer that intends to claim the credit jointly file a notice of tax credit
 9 transfer with the department on or before the earliest of the following dates:

10 (a) A date 30 days after the transfer of the credit;

11 (b) The date on which the transferee files a return; or

12 (c) The due date, including extensions, of the transferee's return.

13 (3) The notice shall be given on a form prescribed by the department that contains:

14 (a) The name and address of the transferor and of the transferee;

15 (b) The taxpayer identification number of the transferor and of the transferee;

16 (c) The dates on which the owner or operator earning the credit received certifications
 17 for the credit;

18 (d) The amount of the credit that is certified, the amount that is being transferred and
 19 the amount that is being retained by the transferor; and

20 (e) Any other information required by the department.

21 (4)(a) A transferor may separately transfer the entirety of that portion of a credit cor-
 22 responding to each tax year to one or more transferees, subject to subsection (5) of this
 23 section.

24 (b) Any amount of credit that would be allowed due only to a carryforward provision may
 25 not be transferred.

26 (5) Any transfer of a tax credit or a portion of a tax credit must be completed no later
 27 than the earliest of the following dates in relation to the tax return on which it is claimed:

28 (a) The original due date, including extensions, of the transferor's return;

29 (b) The date on which the transferor's return is actually filed;

30 (c) The original due date, including extensions, of the transferee's return; or

31 (d) The date on which the transferee's return is actually filed.

32 (6) The transferee shall claim the credit in accordance with the credit provisions for the
 33 tax years in which the credit is allowed.

34 (7) The department by rule may establish policies and procedures for the implementation
 35 of this section.

36 **SECTION 5.** (1) The total amount of potential tax credits for eligible costs on brownfield
 37 properties in this state may not, at the time of approval by the Oregon Business Develop-
 38 ment Department under section 2 of this 2019 Act, exceed \$20 million in any tax year.

39 (2) In the event that the Director of the Oregon Business Development Department re-
 40 ceives applications for credits in excess of the limitation described in subsection (1) of this
 41 section, the director shall allocate the issuance of tax credits according to the order in which
 42 applications are received and may allow credits pursuant to approved applications in the next
 43 tax year in which credits are available.

44 (3) A portion of the tax credits available under subsection (1) of this section shall be re-
 45 served as follows:

1 (a) 25 percent for brownfield properties located in distressed areas; and

2 (b) 25 percent for brownfield properties located in rural areas.

3 (4) Notwithstanding subsection (3) of this section, the Oregon Business Development
4 Department shall process complete applications in the order the applications are received by
5 the department. In any year that the targets established by subsection (3) of this section for
6 tax years beginning in the next succeeding tax year are not reached by June 30 of the cur-
7 rent year, the department may reallocate available remaining tax credits to other submitted
8 complete applications.

9 **SECTION 6.** ORS 315.053 is amended to read:

10 315.053. An income tax credit allowed under ORS 315.141, 315.331, 315.336, 315.341 or 315.354
11 or section 12, chapter 855, Oregon Laws 2007, or section 2 of this 2019 Act may be transferred or
12 sold only to one or more of the following:

13 (1) A C corporation.

14 (2) An S corporation.

15 (3) A personal income taxpayer.

16 **SECTION 7.** ORS 314.752, as amended by section 7, chapter 108, Oregon Laws 2018, is amended
17 to read:

18 314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a
19 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
20 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
21 allowable to the shareholders of the S corporation.

22 (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.734, on
23 income of the shareholder of an S corporation, there shall be taken into account the shareholder's
24 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but
25 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-
26 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the
27 manner prescribed under section 1377(a) of the Internal Revenue Code.

28 (3) The character of any item included in a shareholder's pro rata share under subsection (2)
29 of this section shall be determined as if such item were realized directly from the source from which
30 realized by the corporation, or incurred in the same manner as incurred by the corporation.

31 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
32 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
33 316.117, then that provision shall apply to the nonresident shareholder.

34 (5) As used in this section, "business tax credit" means the following credits: ORS 315.104
35 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141
36 (biomass production for biofuel), ORS 315.156 (crop gleanings), ORS 315.164 and 315.169 (agriculture
37 workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent care assistance), ORS
38 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.237 (employee
39 and dependent scholarships), ORS 315.271 (individual development accounts), ORS 315.304 (pollution
40 control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy
41 conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy re-
42 source equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation facili-
43 ties), ORS 315.506 (tribal taxes on reservation enterprise zones and reservation partnership zones),
44 ORS 315.507 (electronic commerce), ORS 315.514 (film production development contributions), ORS
45 315.521 (university venture development funds), ORS 315.523 (employee training programs), ORS

1 315.533 (low income community jobs initiative), ORS 315.675 (Trust for Cultural Development Ac-
 2 count contributions), ORS 317.097 (loans for affordable housing), ORS 317.124 (long term enterprise
 3 zone facilities), ORS 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified re-
 4 search expenses) and ORS 317.154 (alternative qualified research expenses) and section 9, chapter
 5 774, Oregon Laws 2013 (alternative fuel vehicle contributions), and section 2, chapter 108, Oregon
 6 Laws 2018 (Opportunity Grant Fund contributions), **and section 2 of this 2019 Act (brownfield
 7 removal or remediation).**

8 **SECTION 8.** ORS 318.031 is amended to read:

9 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter
 10 317 shall be administered as uniformly as possible (allowance being made for the difference in im-
 11 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-
 12 corporated into and made a part of this chapter: ORS 315.104, 315.141, 315.156, 315.176, 315.204,
 13 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506, 315.507, 315.523 and 315.533 and section
 14 2, chapter 108, Oregon Laws 2018, **and section 2 of this 2019 Act** (all only to the extent applicable
 15 to a corporation) and ORS chapter 317.

16 **SECTION 9.** **Sections 2 to 5 of this 2019 Act and the amendments to ORS 315.053 by sec-**
 17 **tion 6 of this 2019 Act apply to tax years beginning on or after January 1, 2020, and before**
 18 **January 1, 2026.**

19 **SECTION 10.** **This 2019 Act takes effect on the 91st day after the date on which the 2019**
 20 **regular session of the Eightieth Legislative Assembly adjourns sine die.**

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