

# Senate Bill 929

Sponsored by Senators CARTER, JOHNSON, WESTLUND; Senators BATES, BURDICK, DEVLIN, SCHRADER, WALKER, Representative BOONE (at the request of The Nature Conservancy)

## 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 income tax credit for donations of interests in real property to public or private conservation agencies for specified conservation purposes.

Creates income tax subtraction for costs incurred in undertaking voluntary habitat conservation actions designed to achieve conservation purposes on forestland or exclusive farm use zone farmland owned by taxpayer.

Applies to tax years beginning on or after January 1, 2008.

## A BILL FOR AN ACT

1  
2 Relating to conservation tax incentives; creating new provisions; and amending ORS 314.752 and  
3 318.031.

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

5 **SECTION 1. Sections 2 to 7 of this 2007 Act are added to and made a part of ORS chapter**  
6 **315.**

7 **SECTION 2. Sections 2 to 7 of this 2007 Act shall be known and may be cited as the Land**  
8 **Conservation Incentives Act.**

9 **SECTION 3. (1) The Legislative Assembly finds and declares that the combination of**  
10 **unique natural resources, wildlife habitats, open spaces, agricultural and forested resources**  
11 **and historic resources are of significant benefit to the state and the public.**

12 **(2) The Legislative Assembly further finds that the unique natural resources and dis-**  
13 **tinctive natural heritage resources of this state, including habitat for plants, animals and**  
14 **natural communities, are being lost at an alarming rate.**

15 **(3) The Legislative Assembly further finds that many of the unique natural, historical**  
16 **and open space resources and habitats are found on lands that are privately owned.**

17 **(4) The Legislative Assembly declares it to be the policy of this state to encourage private**  
18 **landowners to be stewards of lands that are important habitat or designated natural areas**  
19 **or that contain significant natural, historical and open space resources.**

20 **(5) The Legislative Assembly desires to complement existing land conservation programs,**  
21 **such as conservation easements authorized under ORS 271.715 to 271.795 or open space as-**  
22 **essments authorized under ORS 308A.300 to ORS 308A.330, instead of duplicating such pro-**  
23 **grams. By complementing existing programs, the Legislative Assembly intends to preserve**  
24 **public financial resources and leverage public expenditures to efficiently and economically**  
25 **achieve significant conservation objectives.**

26 **(6) The Legislative Assembly declares that the purpose of sections 2 to 7 of this 2007 Act**  
27 **is to provide private landowners with incentives to encourage protection of private lands for**  
28 **open space, natural resources, biodiversity conservation, outdoor recreation, farmland and**

**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 forestland preservation, historic preservation and land conservation purposes.

2 **SECTION 4.** As used in sections 2 to 7 of this 2007 Act:

3 (1) "Interest in real property" means any right or interest in real property, including  
4 access thereto, or improvements thereon, including but not limited to a fee simple, ease-  
5 ment, including conservation easement, partial interest, mineral right, water right, remain-  
6 der or future interest, or other right or interest in real property, provided the right or  
7 interest, if donated, would constitute a qualified conservation contribution for purposes of  
8 section 170(h) of the Internal Revenue Code.

9 (2) "Public or private conservation agency" means any governmental body, or any private  
10 nonprofit charitable corporation or trust authorized to do business in this state and organ-  
11 ized and operated for natural resource, land conservation or historic preservation purposes,  
12 if the entity:

13 (a) Is exempt from federal income tax as a governmental entity or as a public charity  
14 under the Internal Revenue Code; and

15 (b) Has the power to acquire, hold and maintain interests in real property for natural  
16 resource, land conservation or historic preservation purposes.

17 (3) "Real property" means land, rights of way, water and riparian rights, easements,  
18 privileges and all other rights or interests of any land or description in, relating to or con-  
19 nected with land.

20 **SECTION 5.** (1) There shall be allowed as a credit against the taxes that are otherwise  
21 due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or  
22 318 for the conveyance of any interest in real property that is for the purpose of:

23 (a) Conserving open space, natural resources or biodiversity;

24 (b) Preserving land in a natural or agricultural state;

25 (c) Watershed preservation; or

26 (d) Historic preservation.

27 (2) In order to qualify for a credit under this section, the conveyance described in sub-  
28 section (1) of this section must be made:

29 (a) During the tax year for which the credit is first claimed;

30 (b) To a public or private conservation agency as an unconditional donation; and

31 (c) As a conveyance in perpetuity of the entirety of the conveyance.

32 (3) The amount of the credit shall equal 50 percent of the fair market value of the  
33 conveyance, but may not exceed \$100,000.

34 (4) Notwithstanding subsection (3) of this section, the credit claimed under this section  
35 in any one tax year may not exceed the tax liability of the taxpayer.

36 (5)(a) Any credit that is not used by the taxpayer in a particular tax year may be carried  
37 forward and used in the next succeeding tax year. Any amount remaining unused in the next  
38 succeeding tax year may subsequently be carried forward and used in the next succeeding  
39 tax year.

40 (b) Unused credit amounts may be carried forward and applied to the taxpayer's tax li-  
41 ability for a succeeding tax year as prescribed in paragraph (a) of this subsection for no more  
42 than 19 tax years following the year for which the credit was first claimed under this section.

43 (6) The credit allowed under this section is not in lieu of any charitable contribution,  
44 depreciation or amortization deduction to which the taxpayer otherwise may be entitled un-  
45 der ORS chapter 316, 317 or 318 for the tax year.

1 (7) The taxpayer's adjusted basis for determining gain or loss may not be further de-  
2 creased by any amount of credit allowed under this section.

3 (8) A nonresident shall be allowed the credit under this section in the proportion provided  
4 in ORS 316.117.

5 (9) If a change in the status of a taxpayer from resident to nonresident or from nonres-  
6 ident to resident occurs, the credit allowed under this section shall be determined in a  
7 manner consistent with ORS 316.117.

8 (10) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or  
9 if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the  
10 credit allowed under this section shall be prorated or computed in a manner consistent with  
11 ORS 314.085.

12 (11) A taxpayer seeking a credit under this section shall claim the credit on a form pre-  
13 scribed by the Department of Revenue, containing the information required by the depart-  
14 ment, including:

15 (a) At least one appraisal by a real estate appraiser licensed or certified under ORS  
16 chapter 674 that gives the appraiser's opinion of the fair market value of the interest in real  
17 property that is being conveyed;

18 (b) The terms and other documentation of the conveyance that demonstrates that the  
19 conveyance qualifies for a credit under this section; and

20 (c) The identity of the public or private conservation agency that is the recipient of the  
21 interest in real property being conveyed and additional information sufficient for the de-  
22 partment to determine that the recipient meets the requirements of a public or private  
23 conservation agency.

24 (12) The department may audit or investigate the information provided by the taxpayer  
25 claiming a credit under this section and may request other information to determine whether  
26 the credit claimed by the taxpayer is allowable under this section.

27 **SECTION 6.** (1) A donor of an interest in real property that has donated the interest in  
28 a conveyance that qualifies for a credit under section 5 of this 2007 Act may transfer the  
29 credit to a taxpayer subject to tax under ORS chapter 316, 317 or 318.

30 (2) In order for a credit under section 5 of this 2007 Act to be transferred:

31 (a) The donor must file the completed credit claim form described in section 5 (11) of this  
32 2007 Act with the Department of Revenue;

33 (b) The donor and the taxpayer that will claim the credit must jointly file a request for  
34 credit transfer with the department; and

35 (c) The department must issue a letter of credit transfer approval to the donor and the  
36 taxpayer that will claim the credit. The letter of credit transfer approval shall state the  
37 amount of the credit being transferred. The department may not issue a letter of credit  
38 transfer approval unless the department has determined that:

39 (A) The conveyance and recipient of the interest in real property meet the requirements  
40 for the credit to be allowable under section 5 of this 2007 Act; and

41 (B) The department has determined a fair market value for the conveyed interest in real  
42 property that will serve as the basis for the credit.

43 **SECTION 7.** The Department of Revenue may adopt rules to implement and administer  
44 sections 2 to 7 of this 2007 Act, including rules defining terms consistently with sections 2  
45 to 7 of this 2007 Act.

1        **SECTION 8.** ORS 314.752 is amended to read:

2        314.752. (1) Except as provided in ORS 314.740 (5)(b), the tax credits allowed or allowable to a  
3        C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The  
4        business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are  
5        allowable to the shareholders of the S corporation.

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

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

15       (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax  
16       credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS  
17       316.117, then that provision shall apply to the nonresident shareholder.

18       (5) As used in this section, "business tax credit" means a tax credit granted to personal income  
19       taxpayers to encourage certain investment, to create employment, economic opportunity or incentive  
20       or for charitable, educational, scientific, literary or public purposes that is listed under this sub-  
21       section as a business tax credit or is designated as a business tax credit by law or by the Depart-  
22       ment of Revenue by rule and includes but is not limited to the following credits: ORS 285C.309  
23       (tribal taxes on reservation enterprise zones), ORS 315.104 (forestation and reforestation), ORS  
24       315.134 (fish habitat improvement), ORS 315.138 (fish screening, by-pass devices, fishways), ORS  
25       315.156 (crop gleaning), ORS 315.164 and 315.169 (farmworker housing), ORS 315.204 (dependent care  
26       assistance), ORS 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS  
27       315.254 (youth apprenticeship sponsorship), ORS 315.304 (pollution control facility), ORS 315.324  
28       (plastics recycling), ORS 315.354 and ORS 469.207 (energy conservation facilities), ORS 315.507  
29       (electronic commerce), ORS 315.511 (advanced telecommunications facilities), ORS 315.604 (bone  
30       marrow transplant expenses) and ORS 317.115 (fueling stations necessary to operate an alternative  
31       fuel vehicle) **and sections 2 to 7 of this 2007 Act (land conservation).**

32       **SECTION 9.** ORS 318.031 is amended to read:

33       318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter  
34       317 shall be administered as uniformly as possible (allowance being made for the difference in im-  
35       position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-  
36       corporated into and made a part of this chapter: ORS 285C.309, 315.104, 315.134, 315.156, 315.204,  
37       315.208, 315.213, 315.254, 315.304, 315.507, 315.511 and 315.604 **and sections 2 to 7 of this 2007 Act**  
38       (all only to the extent applicable for a corporation) and ORS chapter 317.

39       **SECTION 10. Sections 2 to 7 of this 2007 Act and the amendments to ORS 314.752 and**  
40       **318.031 by sections 8 and 9 of this 2007 Act apply to tax years beginning on or after January**  
41       **1, 2008.**

42       **SECTION 11. Section 12 of this 2007 Act is added to and made a part of ORS chapter 316.**

43       **SECTION 12. (1) In addition to the other modifications to federal taxable income set forth**  
44       **in this chapter, there shall be subtracted from federal taxable income the amount paid or**  
45       **incurred by the taxpayer during the tax year to implement a voluntary habitat conservation**

1 action on forestland or exclusive farm use zone farmland owned by the taxpayer.

2 (2) For purposes of this section:

3 (a) "Conservation purpose" has the meaning given that term in section 170(h)(4) of the  
4 Internal Revenue Code.

5 (b) "Exclusive farm use zone farmland" has the meaning given that term in ORS  
6 308A.053.

7 (c) "Forestland" has the meaning given that term in ORS 321.257 or 321.805.

8 (d) "Voluntary habitat conservation action" means an action taken by the taxpayer that:

9 (A) Is not otherwise required by any federal, state or local law;

10 (B) Is designed to achieve, promote or further a conservation purpose;

11 (C) Has a reasonable likelihood of substantially achieving, promoting or furthering that  
12 conservation purpose; and

13 (D) May be further defined by the Department of Revenue by rule.

14 SECTION 13. Section 12 of this 2007 Act applies to tax years beginning on or after Jan-  
15 uary 1, 2008.

16 SECTION 14. Section 15 of this 2007 Act is added to and made a part of ORS chapter 317.

17 SECTION 15. (1) In addition to the other modifications to federal taxable income set forth  
18 in this chapter, there shall be subtracted from federal taxable income the amount paid or  
19 incurred by the taxpayer during the tax year to implement a voluntary habitat conservation  
20 action on forestland or exclusive farm use zone farmland owned by the taxpayer.

21 (2) For purposes of this section:

22 (a) "Conservation purpose" has the meaning given that term in section 170(h)(4) of the  
23 Internal Revenue Code.

24 (b) "Exclusive farm use zone farmland" has the meaning given that term in ORS  
25 308A.053.

26 (c) "Forestland" has the meaning given that term in ORS 321.257 or 321.805.

27 (d) "Voluntary habitat conservation action" means an action taken by the taxpayer that:

28 (A) Is not otherwise required by any federal, state or local law;

29 (B) Is designed to achieve, promote or further a conservation purpose;

30 (C) Has a reasonable likelihood of substantially achieving, promoting or furthering that  
31 conservation purpose; and

32 (D) May be further defined by the Department of Revenue by rule.

33 SECTION 16. Section 15 of this 2007 Act applies to tax years beginning on or after Jan-  
34 uary 1, 2008.