

A-Engrossed
House Bill 2700

Ordered by the House April 11
Including House Amendments dated April 11

Sponsored by Representatives CLEM, ESQUIVEL, BUCKLEY; Representatives BOONE, GELSER, GILLIAM, JENSON, THOMPSON, UNGER, Senators BOQUIST, OLSEN, PROZANSKI, ROBLAN (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.

[Directs Oregon Business Development Department to develop and implement Beginning and Expanding Farmer Loan Program to assist beginning farmers with acquisition of agricultural land, agricultural improvements and depreciable agricultural property. Requires use of private activity bonds on which interest is exempt from federal taxation for loans made by private lenders and sellers to beginning farmers. Requires department to adopt rules for operation of program and to establish definitions, eligibility requirements, criteria and standards in compliance with Internal Revenue Code.]

Directs Oregon Business Development Department, in consultation with State Department of Agriculture and potential lenders, to create Beginning and Expanding Farmer Loan Program to facilitate making loans to beginning farmers to finance acquisition of approved agricultural projects.

Authorizes State Treasurer to issue revenue bonds upon request of Oregon Business Development Department to finance agricultural projects determined eligible for financing.

Creates Beginning and Expanding Farmer Loan Program Fund. Continuously appropriates moneys in fund to department to implement and operate program.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to the Beginning and Expanding Farmer Loan Program; appropriating money; and pre-
3 scribing an effective date.

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

5 **SECTION 1. (1) The Legislative Assembly finds that the demand in Oregon for local food**
6 **is surging, that the interest in farming among younger generations is on the rise and that**
7 **access to capital is one of the most important factors contributing to the development and**
8 **success of a local market agricultural sector in the Oregon economy.**

9 **(2) The Legislative Assembly also finds that the establishment and implementation of a**
10 **federal-state, public-private partnership program to assist beginning farmers is a cost-**
11 **effective way for Oregon to support beginning farmers and the growth of the local market**
12 **agricultural sector across this state and to stabilize the agricultural workforce. Such a pro-**
13 **gram would represent no cost or risk to the state and would allow private lenders to earn**
14 **federally tax exempt interest income on loans to eligible beginning farmers.**

15 **SECTION 2. As used in sections 1 to 6 of this 2013 Act:**

16 **(1) "Agricultural improvements" means any improvements, buildings, structures or fix-**
17 **tures suitable for use in farming that are located on agricultural land.**

18 **(2) "Agricultural land" means land located in this state that is suitable for use in farming**
19 **and that is or will be operated as a farm.**

20 **(3) "Agricultural project" means agricultural improvements, agricultural land or**

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 depreciable agricultural property.

2 (4) "Beginning farmer" means a person, as defined by the Oregon Business Development
3 Department by rule.

4 (5) "Depreciable agricultural property" means personal property suitable for use in
5 farming for which an income tax deduction for depreciation is allowable in computing federal
6 income tax under the Internal Revenue Code, including but not limited to farm machinery
7 and trucks but not including feeder livestock, seed, feed, fertilizer and other types of inven-
8 tory or supplies.

9 (6) "Eligible revenue" means the revenue or assets of an eligible agricultural project that
10 are provided as security for a loan under sections 1 to 6 of this 2013 Act by a beginning
11 farmer, an agent of the beginning farmer or a related party to the beginning farmer.

12 (7) "Lender" means an insured institution, as defined in ORS 706.008, that is authorized
13 to do business in Oregon or another person authorized to make loans to beginning farmers
14 pursuant to sections 1 to 6 of this 2013 Act.

15 **SECTION 3.** (1) The Oregon Business Development Department, in consultation with the
16 State Department of Agriculture and potential lenders, shall create the Beginning and Ex-
17 panding Farmer Loan Program to facilitate the making of loans to beginning farmers to fi-
18 nance the acquisition of an approved agricultural project.

19 (2) Before revenue bonds may be issued for the program, an agricultural project must
20 be determined to be eligible for a loan under sections 1 to 6 of this 2013 Act and the beginning
21 farmer must be qualified by the lender to receive the loan.

22 (3) The Oregon Business Development Department shall adopt rules for the operation of
23 the program, to define terms and to establish an application process and requirements, cri-
24 teria and eligibility standards for beginning farmers and lenders to participate in the pro-
25 gram. The department may approve a loan only if all of the following are satisfied:

26 (a) The lender is approved to participate in the program.

27 (b) The beginning farmer is a resident of this state.

28 (c) The agricultural project that is the subject of the loan is located, or will be used, in
29 this state.

30 (d) The lender acknowledges that the loan to the beginning farmer is secured only by the
31 eligible revenue of an eligible agricultural project and not by revenue or assets of the State
32 of Oregon.

33 (e) The beginning farmer will materially and substantially participate in the farming for
34 which the loan is sought.

35 (f) The eligible agricultural project will be used for farming only by the beginning farmer
36 or by the beginning farmer and the beginning farmer's family.

37 (g) The beginning farmer and the lender have complied with any other requirement, cri-
38 terion or standard prescribed by the department by rule.

39 (4)(a) The department may charge fees to lenders and beginning farmers as necessary:

40 (A) To administer the program; and

41 (B) To cover the cost of procurement of bond counsel, State Treasurer fees, department
42 issuance fees and trustee fees.

43 (b) Lenders may charge fees and points as agreed to by the beginning farmer and the
44 lender and as approved by the department.

45 (5) The lender and the beginning farmer shall agree to the terms of the loan, including

1 interest rate and length of loan. The lender is responsible for making an independent credit
2 evaluation of the beginning farmer or the farming enterprise for which the loan is sought.

3 (6) The State Department of Agriculture shall cooperate with the Oregon Business De-
4 velopment Department to market the program and to provide outreach to beginning farmers
5 and lenders.

6 (7) The Oregon Business Development Department may enter into contracts and agree-
7 ments as necessary and appropriate to implement and manage the program.

8 **SECTION 4.** (1) At the request of the Oregon Business Development Department, the
9 State Treasurer may from time to time issue revenue bonds to:

10 (a) Finance agricultural projects determined eligible for financing under sections 1 to 6
11 of this 2013 Act;

12 (b) Refund bonds issued for the program; or

13 (c) Pay bond-related costs and other costs related to loans approved under sections 1 to
14 6 of this 2013 Act.

15 (2) If the State Treasurer issues the revenue bonds pursuant to this section:

16 (a) The State Treasurer shall:

17 (A) Issue the revenue bonds in the name of the State of Oregon in the manner provided
18 by ORS chapter 286A; and

19 (B) Identify the revenue bonds to the agricultural projects financed by the revenue bonds.

20 (b) The State Treasurer or the department shall designate the trustee, financial advisor
21 and bond counsel, if any, and enter into appropriate agreements with each to carry out
22 sections 1 to 6 of this 2013 Act. The powers conferred on a related agency under ORS chapter
23 286A with respect to the designation of trustee, financial advisor and bond counsel do not
24 apply to revenue bonds issued under this section.

25 (3) A trustee designated to carry out provisions of sections 1 to 6 of this 2013 Act must
26 agree to make reports as required by the State Treasurer or the department.

27 (4) The State Treasurer may charge administrative expenses of the State Treasurer
28 against proceeds of the revenue bonds or eligible revenues of agricultural projects.

29 (5) The State Treasurer is the elected representative for purposes of approving the issu-
30 ance of revenue bonds under sections 1 to 6 of 2013 Act to the extent that approval is re-
31 quired under section 147(f) of the Internal Revenue Code.

32 (6) The validity of revenue bonds authorized by sections 1 to 6 of this 2013 Act is not
33 dependent on or affected by the validity or regularity of proceedings relating to the acqui-
34 sition, purchase, construction, reconstruction, installation, improvement, betterment, exten-
35 sion, management, operation or funding of the agricultural project for which revenues bonds
36 are issued. The revenues bonds must contain a recital that the bonds are issued pursuant
37 to this section and the recital is conclusive evidence of the validity and the regularity of the
38 issuance of the bonds.

39 (7) Revenue bonds issued under this section are not:

40 (a) Secured by, payable from and chargeable to moneys other than the eligible revenue
41 of agricultural projects that are pledged to pay the revenue bonds.

42 (b) A liability of the State of Oregon. A holder or owner of the revenue bonds may not
43 compel an exercise of the taxing power of the state to pay the revenue bonds or the interest
44 on the revenue bonds or enforce payment of the revenue bonds against property of the state
45 except the eligible revenue of an agricultural project.

1 (c) A charge lien or encumbrance, legal or equitable, upon property of the state, except
2 the eligible revenue of an agricultural project.

3 (8) Bonds issued under this section must contain a recital that:

4 (a) The revenue bonds and interest on the revenue bonds are payable solely from the el-
5 igible revenue of an agricultural project.

6 (b) The revenue bonds do not constitute a debt of the state or a lending of the credit of
7 the state within the meaning of any constitutional or statutory limitation.

8 (9) The holders or owners of revenue bonds issued under this section, or a trustee, may,
9 if permitted by the documents associated with the revenue bonds:

10 (a) By action or proceeding for legal or equitable remedies, enforce rights granted
11 against, and compel the performance of duties and obligations of, the State of Oregon or its
12 officers, agents or employees.

13 (b) By action require the state to account as if it were the trustee of an express trust.

14 (c) By action enjoin any acts or things that are unlawful or in violation of a right of the
15 bondholders.

16 (d) Bring action upon the revenue bonds.

17 (e) Exercise rights or remedies conferred by sections 1 to 6 of this 2013 Act in addition
18 to and not in lieu of any other right or remedy conferred by sections 1 to 6 of this 2013 Act
19 or any other law of this state.

20 **SECTION 5.** (1) The Oregon Business Development Department may:

21 (a) Lend the proceeds of revenue bonds authorized by sections 1 to 6 of this 2013 Act for
22 approved agricultural projects.

23 (b) Make contracts, execute instruments and do what is necessary or appropriate to
24 carry out sections 1 to 6 of this 2013 Act.

25 (2) The documents associated with revenue bonds or loans authorized by sections 1 to 6
26 of this 2013 Act may specify:

27 (a) The use and disposition of the revenues of an eligible agricultural project.

28 (b) The creation and maintenance of sinking funds and the regulation, disposition and
29 use of moneys in the sinking funds.

30 (c) The creation and maintenance of funds to provide for maintaining the eligible agri-
31 cultural project and replacement of properties depreciated, damaged, destroyed or con-
32 demned.

33 (d) The disposition and use of the proceeds of revenue bonds.

34 (e) The nature of mortgages or other encumbrances on the eligible agricultural project
35 made in favor of the holder or owners of revenue bonds or in favor of an escrow agent,
36 vendor, lender, other financing party or trustee.

37 (f) The events of default, the rights and liabilities and the terms and conditions upon
38 which the holders or owners of revenue bonds issued under section 4 of this 2013 Act may
39 bring an action or proceeding on the revenue bonds.

40 (g) The conditions under which additional revenue bonds or other obligations may be is-
41 sued that are payable from eligible revenue of an eligible agricultural project.

42 (h) The insurance to be carried on an eligible agricultural project and the disposition and
43 use of insurance moneys.

44 (i) The keeping of books of account and the inspection and audit of the books.

45 (j) The terms and conditions upon which all or part of the revenue bonds become, or may

1 be declared, due before maturity and the terms and conditions upon which a declaration and
2 the consequences of the declaration may be waived.

3 (k) The rights, liabilities, powers and duties arising upon the breach by a beginning
4 farmer, a lender or a related party.

5 (L) The appointing of and vesting in a trustee of the right to enforce covenants made to
6 secure or to pay the revenue bonds, the powers and duties of the trustee and the limitation
7 of the liability of the trustee.

8 (m) The terms and conditions upon which holders or owners of the revenue bonds may
9 enforce covenants made by beginning farmers, trustees and other parties to the bond docu-
10 ments.

11 (n) The subordination of the security of revenue bonds authorized by sections 1 to 6 of
12 this 2013 Act, and the payment of principal and interest on the revenue bonds, to other bonds
13 or obligations of the State of Oregon that:

14 (A) Are issued to finance the approved agricultural project; or

15 (B) That are outstanding when the subordinated revenue bonds are issued and delivered.

16 (o) Other terms approved by the department that are consistent with sections 1 to 6 of
17 this 2013 Act.

18 (3) The State of Oregon:

19 (a) May not acquire an ownership or leasehold interest in an approved agricultural
20 project in connection with the financing of the agricultural project.

21 (b) May not operate an approved agricultural project as a business or in any manner
22 whatsoever.

23 (c) May not expend moneys on an eligible agricultural project, other than eligible revenue
24 of the eligible agricultural project, the proceeds of revenue bonds issued under section 4 of
25 this 2013 Act or other moneys received by the state as grants or gifts with which to make
26 payments for an eligible agricultural project.

27 **SECTION 6.** (1) There is created the Beginning and Expanding Farmer Loan Program
28 Fund, separate and distinct from the General Fund. Interest earned by the Beginning and
29 Expanding Farmer Loan Program Fund shall be credited to the fund. All moneys credited to
30 the fund are continuously appropriated to the Oregon Business Development Department for
31 the purpose of implementing and operating the Beginning and Expanding Farmer Loan Pro-
32 gram under sections 1 to 6 of this 2013 Act.

33 (2) The fund shall consist of all moneys credited to the fund, including:

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

36 (b) Earnings on moneys in the fund;

37 (c) Fees paid to the department by beginning farmers and lenders; and

38 (d) Moneys from any other source, including but not limited to grants and gifts.

39 (3) Moneys in the fund may be invested as provided by ORS 293.701 to 293.820 and the
40 earnings from investments shall be credited to the fund.

41 (4) The department may establish accounts within the fund to carry out sections 1 to 6
42 of this 2013 Act.

43 **SECTION 7.** This 2013 Act takes effect on the 91st day after the date on which the 2013
44 regular session of the Seventy-seventh Legislative Assembly adjourns sine die.