

Enrolled House Bill 2700

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

CHAPTER

AN ACT

Relating to the Beginning and Expanding Farmer Loan Program; appropriating money; limiting expenditures; and prescribing an effective date.

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

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

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

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

(1) "Agricultural improvements" means any improvements, buildings, structures or fixtures suitable for use in farming that are located on agricultural land.

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

(3) "Agricultural project" means agricultural improvements, agricultural land or depreciable agricultural property.

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

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

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

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

SECTION 3. (1) The Oregon Business Development Department, in consultation with the State Department of Agriculture and potential lenders, shall create the Beginning and Expanding Farmer Loan Program to facilitate the making of loans to beginning farmers to finance the acquisition of an approved agricultural project.

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

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

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

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

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

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

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

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

(g) The beginning farmer and the lender have complied with any other requirement, criterion or standard prescribed by the department by rule.

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

(A) To administer the program; and

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

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

(5) The lender and the beginning farmer shall agree to the terms of the loan, including interest rate and length of loan. The lender is responsible for making an independent credit evaluation of the beginning farmer or the farming enterprise for which the loan is sought.

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

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

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

(b) Refund bonds issued for the program; or

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

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

(a) The State Treasurer shall:

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

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

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

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

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

(5) The State Treasurer is the elected representative for purposes of approving the issuance of revenue bonds under sections 1 to 6 of 2013 Act to the extent that approval is required under section 147(f) of the Internal Revenue Code.

(6) The validity of revenue bonds authorized by sections 1 to 6 of this 2013 Act is not dependent on or affected by the validity or regularity of proceedings relating to the acquisition, purchase, construction, reconstruction, installation, improvement, betterment, extension, management, operation or funding of the agricultural project for which revenues bonds are issued. The revenues bonds must contain a recital that the bonds are issued pursuant to this section and the recital is conclusive evidence of the validity and the regularity of the issuance of the bonds.

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

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

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

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

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

(a) The revenue bonds and interest on the revenue bonds are payable solely from the eligible revenue of an agricultural project.

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

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

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

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

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

(d) Bring action upon the revenue bonds.

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

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

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

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

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

- (a) The use and disposition of the revenues of an eligible agricultural project.
- (b) The creation and maintenance of sinking funds and the regulation, disposition and use of moneys in the sinking funds.
- (c) The creation and maintenance of funds to provide for maintaining the eligible agricultural project and replacement of properties depreciated, damaged, destroyed or condemned.
- (d) The disposition and use of the proceeds of revenue bonds.
- (e) The nature of mortgages or other encumbrances on the eligible agricultural project made in favor of the holder or owners of revenue bonds or in favor of an escrow agent, vendor, lender, other financing party or trustee.
- (f) The events of default, the rights and liabilities and the terms and conditions upon which the holders or owners of revenue bonds issued under section 4 of this 2013 Act may bring an action or proceeding on the revenue bonds.
- (g) The conditions under which additional revenue bonds or other obligations may be issued that are payable from eligible revenue of an eligible agricultural project.
- (h) The insurance to be carried on an eligible agricultural project and the disposition and use of insurance moneys.
- (i) The keeping of books of account and the inspection and audit of the books.
- (j) The terms and conditions upon which all or part of the revenue bonds become, or may be declared, due before maturity and the terms and conditions upon which a declaration and the consequences of the declaration may be waived.
- (k) The rights, liabilities, powers and duties arising upon the breach by a beginning farmer, a lender or a related party.
- (L) The appointing of and vesting in a trustee of the right to enforce covenants made to secure or to pay the revenue bonds, the powers and duties of the trustee and the limitation of the liability of the trustee.
- (m) The terms and conditions upon which holders or owners of the revenue bonds may enforce covenants made by beginning farmers, trustees and other parties to the bond documents.
- (n) The subordination of the security of revenue bonds authorized by sections 1 to 6 of this 2013 Act, and the payment of principal and interest on the revenue bonds, to other bonds or obligations of the State of Oregon that:
 - (A) Are issued to finance the approved agricultural project; or
 - (B) That are outstanding when the subordinated revenue bonds are issued and delivered.
- (o) Other terms approved by the department that are consistent with sections 1 to 6 of this 2013 Act.
- (3) The State of Oregon:
 - (a) May not acquire an ownership or leasehold interest in an approved agricultural project in connection with the financing of the agricultural project.
 - (b) May not operate an approved agricultural project as a business or in any manner whatsoever.
 - (c) May not expend moneys on an eligible agricultural project, other than eligible revenue of the eligible agricultural project, the proceeds of revenue bonds issued under section 4 of this 2013 Act or other moneys received by the state as grants or gifts with which to make payments for an eligible agricultural project.

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

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

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

(b) Earnings on moneys in the fund;

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

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

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

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

SECTION 7. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 3 (1), chapter _____, Oregon Laws 2013 (Enrolled House Bill 5028), for the biennium beginning July 1, 2013, as the maximum limit for payment of expenses from lottery moneys allocated from the Administrative Services Economic Development Fund to the Oregon Business Development Department, is increased by \$227,607 for the Beginning and Expanding Farmer Loan Program.

SECTION 8. This 2013 Act takes effect on the 91st day after the date on which the 2013 regular session of the Seventy-seventh Legislative Assembly adjourns sine die.

Passed by House July 1, 2013

.....
Ramona J. Line, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate July 6, 2013

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2013

Approved:

.....M.,....., 2013

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2013

.....
Kate Brown, Secretary of State