

**A-Engrossed**  
**House Bill 2086**

Ordered by the House February 8  
Including House Amendments dated February 8

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Oregon Watershed Enhancement Board)

**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.

Revises definitions and harmonizes language for purposes of program supporting working land conservation. Revises Oregon Agricultural Heritage Commission duties.

**A BILL FOR AN ACT**

1  
2 Relating to working land conservation; creating new provisions; and amending ORS 541.977, 541.981,  
3 541.982, 541.984, 541.988 and 541.989.

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

5 **SECTION 1.** ORS 541.977 is amended to read:

6 541.977. As used in ORS 541.977 to 541.989:

7 (1) "Agricultural [*owner*] **landowner** or operator" means a landowner, operator, manager or  
8 other person having responsibility for exercising control over the day-to-day operation of a farm or  
9 ranch.

10 (2) "Working land" means land that is actively used by an agricultural [*owner*] **landowner** or  
11 operator for an agricultural operation that includes, but need not be limited to, active engagement  
12 in farming or ranching.

13 (3) "Working land conservation covenant" means a nonpossessory interest in working land for  
14 a fixed term that imposes limitations or affirmative obligations for [*the*] purposes that [*support*]  
15 **preserve and protect** the use of the land for agricultural production and for the maintenance or  
16 enhancement of fish [*and*] **or** wildlife habitat, improvement of water quality or support of other na-  
17 tural resource values.

18 (4) "Working land conservation easement" means a permanent nonpossessory interest in working  
19 land that imposes limitations or affirmative obligations for purposes that [*support the use of*] **pre-**  
20 **serve and protect** the land for agricultural production and for the maintenance or enhancement  
21 of fish [*and*] **or** wildlife habitat, improvement of water quality or support of other natural resource  
22 values.

23 **SECTION 2.** ORS 541.981 is amended to read:

24 541.981. (1) An agricultural [*owner*] **landowner** or operator may enter into a conservation man-  
25 agement plan with an organization for working land to be managed in a manner that supports one  
26 or more natural resource values. The conservation management plan may be composed of multiple  
27 components addressing different natural resource values as identified in subsection (2) of this sec-  
28 tion.

**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 (2) A conservation management plan must be for the purpose of developing and implementing  
2 conservation measures or other protections for maintaining or enhancing fish or wildlife habitat,  
3 improving water quality or supporting other natural resource values in a manner consistent with the  
4 social and economic interests and abilities of the agricultural [owner] **landowner** or operator. The  
5 plan may include provisions for addressing particular priorities related to natural resource values,  
6 including but not limited to soil, water, plants, animals, energy and human need considerations.

7 (3) A conservation management plan must:

8 (a) Meet the standards established by Oregon Watershed Enhancement Board rules;

9 (b) State the duration or terminating event for the plan;

10 (c) Be specific to the land, and account for the needs of, the agricultural [owner] **landowner** or  
11 operator;

12 (d) Provide for the parties to review the plan on a regular basis;

13 (e) Provide for flexibility and allow for mutual modification as necessary to reflect changes in  
14 practices or circumstances;

15 (f) Provide for regular monitoring by the organization to ensure that the agricultural [owner]  
16 **landowner** or operator is adhering to the plan;

17 (g) Make any receipt by the agricultural [owner] **landowner** or operator of annual payments for  
18 carrying out the plan contingent on adherence to the plan; and

19 (h) Limit any annual payments for carrying out the plan to a term of not less than 20 years or  
20 more than 50 years.

21 (4) An organization that enters into, or proposes to enter into, a conservation management plan  
22 may apply to the board for a grant to fund the [purchasing, implementing] **development, imple-**  
23 **mentation**[, carrying out] or monitoring of the plan if the organization is:

24 (a) A holder, as defined in ORS 271.715, other than a state agency;

25 (b) A watershed council; or

26 [(c) Tax exempt under section 501(c)(3) of the Internal Revenue Code.]

27 **(c) A not-for-profit organization other than a state agency.**

28 **SECTION 3.** ORS 541.982 is amended to read:

29 541.982. (1) An owner of working land may enter into a working land conservation covenant  
30 with or grant a working land conservation easement to an organization that is a holder, as defined  
31 in ORS 271.715, other than a state agency. The covenant or easement must be for the [purpose of  
32 ensuring the continued use of] **purposes of preserving and protecting** the land for agricultural  
33 purposes [while] **and** maintaining or enhancing fish or wildlife habitat, improving water quality or  
34 supporting other natural resource values on the land. A working land conservation covenant must  
35 be for a term of years that is established as permissible in [Oregon Agricultural Heritage  
36 Commission] rules **described under subsection (6) of this section.**

37 (2) In addition to the purposes required under subsection (1) of this section, a working land  
38 conservation covenant or working land conservation easement may provide for carrying out any  
39 purposes of a conservation easement, as defined in ORS 271.715. The covenant or easement must  
40 provide for carrying out those additional purposes in a manner consistent with ORS 271.715 to  
41 271.795.

42 (3) A working land conservation covenant or working land conservation easement must:

43 (a) Provide for regular monitoring by the organization [accepting] **entering into** the covenant  
44 or **accepting the** easement to ensure that the owner of the working land is adhering to the  
45 covenant or easement provisions; and

1 (b) If identical in duration to a conservation management plan for the working land, refer to the  
2 conservation management plan in the text of the covenant or easement.

3 (4) An organization that enters into[,] or proposes to enter into[,] a working land conservation  
4 covenant, or [*accept*] **that accepts** a working land conservation easement, may apply to the Oregon  
5 Watershed Enhancement Board for a grant to fund the purchasing, implementing[, *carrying out*] or  
6 monitoring of the covenant or easement.

7 (5) An application under subsection (4) of this section may be combined with an application  
8 under ORS 541.981 for a grant to fund **the development, implementation or monitoring of** a  
9 conservation management plan associated with the working land conservation covenant or working  
10 land conservation easement.

11 **(6) The board shall adopt rules establishing three or more permissible terms of years,**  
12 **which are not less than 20 or more than 50 years, for working land conservation covenants**  
13 **formed under this section.**

14 **SECTION 4.** ORS 541.984 is amended to read:

15 541.984. (1) The Oregon Watershed Enhancement Board shall establish programs to provide  
16 grants from the Oregon Agricultural Heritage Fund for the purposes of:

17 (a) Assisting [*owners of working land*] **agricultural landowners or operators** with succession  
18 planning for [*those*] **working** lands;

19 [*(b) Funding the purchasing, implementing, carrying out or monitoring of conservation management*  
20 *plans, working land conservation covenants or working land conservation easements described in ORS*  
21 *541.981 and 541.982; and*]

22 **(b)(A) Funding the development, implementation or monitoring of conservation manage-**  
23 **ment plans under ORS 541.981; or**

24 **(B) Funding the purchase, implementation or monitoring of working land conservation**  
25 **covenants or working land conservation easements under ORS 541.982; and**

26 (c) Providing [*development funding or*] technical assistance to organizations that:

27 **(A)** Enter into or [*propose*] **are eligible** to enter into agreements resulting in conservation  
28 management plans[, *or that accept or propose to accept*] **or** working land conservation covenants; or

29 **(B) Are eligible to accept** working land conservation easements.

30 (2) The board, after consultation with the Oregon Agricultural Heritage Commission established  
31 in ORS 541.986, shall adopt rules that establish a process for submitting and processing applications  
32 for grants under ORS 541.981 and 541.982. To the extent practicable, the board shall design the  
33 process to:

34 (a) Allow flexibility and responsiveness to program participant needs; and

35 (b) Ensure compatibility with federal working land conservation easement programs and other  
36 programs for the conservation of working land.

37 (3) The [*board and the commission, shall jointly*] **commission shall** appoint one or more techni-  
38 cal committees to evaluate and rank conservation management plans, working land conservation  
39 covenants and working land conservation easements described in applications filed under ORS  
40 541.981 and 541.982. The system used by the technical committee or committees shall provide for the  
41 ranking of conservation management plans to be separate from the ranking of working land con-  
42 servation covenants and working land conservation easements. The ranking for a plan, covenant or  
43 easement shall be based on criteria that include, but need not be limited to:

44 (a) The extent to which the plan, covenant or easement would protect, maintain or enhance  
45 farming or ranching on working land;

1 (b) The extent to which the plan, covenant or easement would protect, maintain or enhance fish  
2 or wildlife habitat, improve water quality or support other natural resource values;

3 (c) The extent to which the plan, covenant or easement would protect, **maintain or enhance**  
4 agricultural outcomes, benefits or other investment gains;

5 (d) The capacity of the organization that filed the application to enter into a conservation  
6 management plan[, *accept*] **or** a working land conservation covenant or **to accept** working land  
7 conservation easement, and the competence of the organization;

8 (e) The extent to which the benefit to the state from the investment may be maximized, based  
9 on the ability to leverage grant moneys with other funding sources and on the duration and extent  
10 of the conservation management plan, working land conservation covenant or working land conser-  
11 vation easement; and

12 (f) The extent and nature of plan, covenant or easement impacts on owners or operators of  
13 neighboring lands.

14 (4) The criteria for ranking conservation management plans, working land conservation  
15 covenants or working land conservation easements under subsection (3) of this section may not in-  
16 clude a consideration of the type of agricultural operation conducted on the working land.

17 (5) An applicant must demonstrate to the satisfaction of the board that the participants in a  
18 conservation management plan, working land conservation covenant or working land conservation  
19 easement to be benefitted by a grant under this section understand and agree to their roles and  
20 responsibilities under the plan, covenant or easement.

21 (6) The board may issue a grant to fund a conservation management plan, working land con-  
22 servation covenant or working land conservation easement described in ORS 541.981 and 541.982  
23 only if:

24 (a) There is a contribution of cash for the plan, covenant or easement, a contribution of in-kind  
25 services or another form of investment in the plan, covenant or easement from a funding source  
26 other than the Oregon Agricultural Heritage Fund;

27 (b) The plan, covenant or easement is reviewed by a technical committee that has expertise  
28 relevant to the described plan, covenant or easement; and

29 (c) The commission reviews and recommends funding of the plan, covenant or easement.

30 (7)(a) Except as provided in **paragraph (b) of** this subsection, an organization that receives a  
31 grant from the board for a conservation management plan, or an agricultural [*owner*] **landowner**  
32 or operator receiving payments of moneys from an organization grant regarding a conservation  
33 management plan, may receive cash contributions, other financial assistance, in-kind services or in-  
34 vestments, rental or easement payments, tax benefits or other benefits from a federal, state or pri-  
35 vate entity in return for practices related to the [*purchasing, implementing*] **development,**  
36 **implementation**[, *carrying out*] or monitoring of the conservation management plan.

37 (b) The board or an organization grant may not[, *however,*] provide payments that duplicate any  
38 federal, state or private payments for the same measures directed to maintaining or enhancing fish  
39 or wildlife habitat, improving water quality or supporting other natural resource values within the  
40 **conservation management** plan.

41 (8) An organization that receives a grant from the board for a working land conservation  
42 covenant or a working land conservation easement, or an owner of working land that enters into  
43 a working land conservation covenant or grants a working land conservation easement, may receive  
44 cash contributions, other financial assistance, in-kind services or [*other forms of investment from any*  
45 *public or private sources for purposes of purchasing, implementing,*] **investments, rental or ease-**

1 **ment payments, tax benefits or other benefits from a federal, state or private entity in re-**  
2 **turn for practices related to the purchase, implementation** [*carrying out*] or monitoring of the  
3 covenant or easement.

4 **SECTION 5.** ORS 541.988 is amended to read:

5 541.988. (1) In accordance with applicable provisions of ORS chapter 183, the Oregon Agricul-  
6 tural Heritage Commission [*may adopt rules necessary for the administration of the laws that the*  
7 *commission is charged with administering*] **shall recommend to the Oregon Watershed Enhance-**  
8 **ment Board the adoption of board rules for carrying out programs under ORS 541.977 to**  
9 **541.989.**

10 (2) The commission may establish any advisory or technical committee the commission considers  
11 necessary to aid and advise **staff or** the commission in the performance of its functions. The com-  
12 mittees may be continuing or temporary committees. The commission shall determine the represen-  
13 tation, membership, terms and organization of the committees and shall appoint the members of the  
14 committees. The commission chairperson shall be a nonvoting member of each committee.

15 (3) Members of advisory or technical committees established by the commission are not entitled  
16 to compensation but, at the discretion of the commission and with the consent of the Oregon  
17 Watershed Enhancement Board, may be reimbursed from funds available to the board for actual and  
18 necessary travel and other expenses incurred by the members in the performance of official duties  
19 in the manner and amount provided in ORS 292.495.

20 **SECTION 6.** ORS 541.989 is amended to read:

21 541.989. (1) The Oregon Agricultural Heritage Commission shall:

22 [(a) *Assist the Oregon Watershed Enhancement Board with the development of rules for the ad-*  
23 *ministration of programs under ORS 541.977 to 541.989;*]

24 [(b) *Adopt rules establishing three or more permissible terms of years, that are not less than 20*  
25 *or more than 50 years, for working land conservation covenants formed under ORS 541.982;*]

26 [(c)] (a) Recommend policies and priorities for use by the **Oregon Watershed Enhancement**  
27 Board in evaluating the farm or ranch values, and the fish or wildlife habitat, water quality or other  
28 natural resource values, on working land described in a grant application filed under ORS 541.981  
29 or 541.982;

30 [(d) *Review and consider the recommendations of technical committees appointed under ORS*  
31 *541.984;*]

32 [(e)] (b) Consult with the board concerning grant applications;

33 [(f)] (c) Provide conservation management plan, working land conservation covenant [*and*],  
34 working land conservation easement, **succession planning and technical assistance** funding rec-  
35 ommendations to the board based on the availability of funding from the Oregon Agricultural Her-  
36 itage Fund; and

37 [(g)] (d) Provide funding recommendations to the Legislative Assembly, or recommendations for  
38 grant funding to the board, to provide training and support to [*owners of working land*] **agricultural**  
39 **landowners or operators**, or persons advising [*owners of working land*] **agricultural landowners**  
40 **or operators**, regarding succession planning for [*the*] **working** lands.

41 (2) The commission's recommendations for funding under subsection [(1)(g)] (1)(d) of this section  
42 may include recommendations for funding succession planning programs through the Oregon State  
43 University Extension Service only if the university has presented the commission with a program  
44 proposal for review. If a commission recommendation for funding succession planning programs  
45 through the university extension service is adopted, the university shall provide the commission with

1 an annual report regarding each program.

2 **SECTION 7. The amendments to ORS 541.977, 541.981, 541.982, 541.984, 541.988 and 541.989**  
3 **by sections 1 to 6 of this 2019 Act apply to working land conservation covenants, working**  
4 **land conservation easements, conservation management plans and interests in working**  
5 **lands:**

6 (1) Created on or after effective date of this 2019 Act; or

7 (2) That are the subject of an application for funding from the Oregon Agricultural Her-  
8 itage Fund on which the Oregon Watershed Enhancement Board makes a final decision on  
9 or after the effective date of this 2019 Act.

10