A-Engrossed
House Bill 2086

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

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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

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

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

SECTION 1. ORS 541.977 is amended to read:

541.977. As used in ORS 541.977 to 541.989:

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

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

(3) “Working land conservation covenant” means a nonpossessory interest in working land for a fixed term that imposes limitations or affirmative obligations for [the] purposes that [support] preserve and protect the use of the land for agricultural production and for the maintenance or enhancement of fish [and] or wildlife habitat, improvement of water quality or support of other natural resource values.

(4) “Working land conservation easement” means a permanent nonpossessory interest in working land that imposes limitations or affirmative obligations for purposes that [support the use of] preserve and protect the land for agricultural production and for the maintenance or enhancement of fish [and] or wildlife habitat, improvement of water quality or support of other natural resource values.

SECTION 2. ORS 541.981 is amended to read:

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

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.

LC 510
(2) A conservation management plan must be for the purpose of developing and implementing conservation measures or other protections for maintaining or enhancing fish or wildlife habitat, improving water quality or supporting other natural resource values in a manner consistent with the social and economic interests and abilities of the agricultural [owner] landowner or operator. The plan may include provisions for addressing particular priorities related to natural resource values, including but not limited to soil, water, plants, animals, energy and human need considerations.

(3) A conservation management plan must:
(a) Meet the standards established by Oregon Watershed Enhancement Board rules;
(b) State the duration or terminating event for the plan;
(c) Be specific to the land, and account for the needs of, the agricultural [owner] landowner or operator;
(d) Provide for the parties to review the plan on a regular basis;
(e) Provide for flexibility and allow for mutual modification as necessary to reflect changes in practices or circumstances;
(f) Provide for regular monitoring by the organization to ensure that the agricultural [owner] landowner or operator is adhering to the plan;
(g) Make any receipt by the agricultural [owner] landowner or operator of annual payments for carrying out the plan contingent on adherence to the plan; and
(h) Limit any annual payments for carrying out the plan to a term of not less than 20 years or more than 50 years.

(4) An organization that enters into, or proposes to enter into, a conservation management plan may apply to the board for a grant to fund the [purchasing, implementing] development, implementation, carrying out or monitoring of the plan if the organization is:
(a) A holder, as defined in ORS 271.715, other than a state agency;
(b) A watershed council; or
(c) Tax exempt under section 501(c)(3) of the Internal Revenue Code.

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

SECTION 3. ORS 541.982 is amended to read:
541.982. (1) An owner of working land may enter into a working land conservation covenant with or grant a working land conservation easement to an organization that is a holder, as defined in ORS 271.715, other than a state agency. The covenant or easement must be for the [purpose of ensuring the continued use of] purposes of preserving and protecting the land for agricultural purposes [while] and maintaining or enhancing fish or wildlife habitat, improving water quality or supporting other natural resource values on the land. A working land conservation covenant must be for a term of years that is established as permissible in [Oregon Agricultural Heritage Commission] rules described under subsection (6) of this section.

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

(3) A working land conservation covenant or working land conservation easement must:
(a) Provide for regular monitoring by the organization [accepting] entering into the covenant or accepting the easement to ensure that the owner of the working land is adhering to the covenant or easement provisions; and
(b) If identical in duration to a conservation management plan for the working land, refer to the conservation management plan in the text of the covenant or easement.

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

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

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

SECTION 4. ORS 541.984 is amended to read:

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

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

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

(b)(A) Funding the development, implementation or monitoring of conservation management plans under ORS 541.981; or

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

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

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

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

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

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

(a) The extent to which the plan, covenant or easement would protect, maintain or enhance farming or ranching on working land;
(b) The extent to which the plan, covenant or easement would protect, maintain or enhance fish
or wildlife habitat, improve water quality or support other natural resource values;
(c) The extent to which the plan, covenant or easement would protect, maintain or enhance agri-
cultural outcomes, benefits or other investment gains;
(d) The capacity of the organization that filed the application to enter into a conservation
management plan[; accept] or a working land conservation covenant or to accept working land
conservation easement, and the competence of the organization;
(e) The extent to which the benefit to the state from the investment may be maximized, based
on the ability to leverage grant moneys with other funding sources and on the duration and extent
of the conservation management plan, working land conservation covenant or working land conser-
vation easement; and
(f) The extent and nature of plan, covenant or easement impacts on owners or operators of
neighboring lands.

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

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

(6) The board may issue a grant to fund a conservation management plan, working land con-
servation covenant or working land conservation easement described in ORS 541.981 and 541.982
only if:
(a) There is a contribution of cash for the plan, covenant or easement, a contribution of in-kind
services or another form of investment in the plan, covenant or easement from a funding source
other than the Oregon Agricultural Heritage Fund;
(b) The plan, covenant or easement is reviewed by a technical committee that has expertise
relevant to the described plan, covenant or easement; and
(c) The commission reviews and recommends funding of the plan, covenant or easement.

(7(a) Except as provided in paragraph (b) of this subsection, an organization that receives a
grant from the board for a conservation management plan, or an agricultural [owner] landowner
or operator receiving payments of moneys from an organization grant regarding a conservation
management plan, may receive cash contributions, other financial assistance, in-kind services or in-
vestments, rental or easement payments, tax benefits or other benefits from a federal, state or pri-
ivate entity in return for practices related to the [purchasing, implementing] development,
implementation], carrying out) or monitoring of the conservation management plan.
(b) The board or an organization grant may not[; however,] provide payments that duplicate any
federal, state or private payments for the same measures directed to maintaining or enhancing fish
or wildlife habitat, improving water quality or supporting other natural resource values within the
conservation management plan.

(8) An organization that receives a grant from the board for a working land conservation

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

SECTION 5. ORS 541.988 is amended to read:

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

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

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

SECTION 6. ORS 541.989 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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