

**FISCAL IMPACT OF PROPOSED LEGISLATION**

Measure: HB 4002 - A12

81st Oregon Legislative Assembly – 2022 Regular Session  
Legislative Fiscal Office*Only Impacts on Original or Engrossed  
Versions are Considered Official*

Prepared by: Michael Graham  
 Reviewed by: Matt Stayner, John Borden, John Terpening, Michelle Deister, Zane Potter, Ben Ruef, Kim To,  
 Amanda Beitel  
 Date: February 24, 2022

**Measure Description:**

Prohibits employers from permitting or requiring agricultural workers to work in excess of maximum allowable hours unless workers are compensated for overtime hours worked.

**Government Unit(s) Affected:**

Department of Revenue (DOR), Oregon Judicial Department (OJD), Employment Department (OED), Oregon Department of Agriculture (ODA), Department of Administrative Services (DAS), Oregon Business Development Department (OBDD), Bureau of Labor and Industries (BOLI), Legislative Assembly

**Summary of Fiscal Impact:**

Costs related to the measure will require budgetary action - See analysis.

**Summary of Expenditure Impact:**

	2021-23 Biennium	2023-25 Biennium
<b>Department of Revenue (DOR)</b>		
General Fund		
Personal Services	61,137	1,448,486
Services and Supplies	18,315	250,652
Capital Outlay		44,297
<b>Total General Fund</b>	<b>\$79,452</b>	<b>\$1,743,435</b>
<b>DOR FISCAL IMPACT</b>	<b>\$79,452</b>	<b>\$1,743,435</b>
Positions	1	16
FTE	0.27	9.00
<b>Bureau of Labor and Industries (BOLI)</b>		
General Fund		
Personal Services	426,317	756,762
Services and Supplies	82,800	57,800
<b>Total General Fund</b>	<b>\$509,117</b>	<b>\$814,562</b>
<b>BOLI FISCAL IMPACT</b>	<b>\$509,117</b>	<b>\$814,562</b>
Positions	4	4
FTE	2.00	3.50
<b>TOTAL FISCAL IMPACT</b>	<b>\$588,569</b>	<b>\$2,557,997</b>
Positions	5	20
FTE	2.27	12.50

**Analysis:**

House Bill 4002, as modified by the -A12 amendments, establishes maximum hour and overtime wage requirements for Oregon agricultural workers. Maximum hours are phased in over five years, which begin at 55 hours in 2023 and are reduced to 40 hours by 2027.

The measure establishes a refundable tax credit against corporate taxes to offset a percentage of the additional cost of overtime wages paid by a crop or animal production business. The refundable tax credit for a portion of the additional cost of overtime is available for overtime wages paid, for work performed in Oregon, through 2028. The measure directs the Department of Revenue (DOR) to adopt rules for purposes of administering the tax credit, including policies and procedures for certifying taxpayers as eligible for the credit. A taxpayer shall apply to DOR for certification by January 31 with specific information following the calendar year for which the taxpayer seeks the credit, and DOR shall issue a written certification to the taxpayer by June 1. Upon receipt of application, DOR must allow an extension for filing the taxpayer's income or corporate excise tax return. The measure provides that the amount certified for the tax credit may not exceed \$55 million for all taxpayers for any calendar year and requires credits to be reduced proportionally if the amount certified exceeds the maximum. DOR may retain a working balance of unreceipted revenue from the tax imposed for the payment of refunds, though not to exceed \$500,000. Moneys are continuously appropriated to DOR to make authorized refunds and refunds in excess of tax liability. The measure takes effect on 91 days after adjournment *sine die*.

The measure directs the Department of Administrative Services to include in its biennial economic forecasts any available relevant economic and wage data relating to the agricultural sector in the state.

The measure directs the Oregon Employment Department, in consultation with the Bureau of Labor and Industries, the Department of Revenue and the Oregon Department of Agriculture (ODA), to submit a report, by November 30, 2026 and every six years thereafter, to interim committees of the Legislative Assembly related to agriculture, on the economic impacts of the measure's overtime compensation requirements.

The measure directs ODA and the Oregon Business Development Department to make recommendations for legislation, by September 30, 2022, to a regular or interim committee of the Legislative Assembly related to agriculture regarding available options for establishing a grant program, loan program, or lending program to which \$10 million will be allocated for the purpose of providing financial assistance to employers to mitigate the costs associated with compliance with the overtime compensation in the measure. It should be noted that a \$10 million special purpose appropriation is anticipated to be included in the omnibus budget measure for this program, in addition to any direct costs for the agencies.

The measure takes effect on 91 days after adjournment *sine die*.

**Department of Revenue**

The measure requires Department of Revenue to certify taxpayer qualification for the refundable tax credit. This would be a new responsibility for DOR, as tax credits are currently certified by the agency with subject matter expertise or access to verifying data (in this case, the Oregon Employment Department). DOR anticipates needing to create a new unit in the Business Division to administer the tax credit certification, which will include processing applications, reviewing and approving supporting documents, tracking qualified tax credit amounts, managing appeals of denied applications, and providing customer service to taxpayers and tax professionals. DOR will also develop a comprehensive communication plan to conduct outreach and provide information to taxpayers subject to the new requirements and tax professionals. DOR will develop new forms and administrative rules in consultation with stakeholders. DOR will also have information technology development and Processing Center needs for receiving applications and connecting information to taxpayer accounts.

In the 2021-23 biennium, DOR anticipates needing one limited duration Information Systems Specialist 7 (0.27 FTE) to conduct information technology development and testing on its GenTax application. In the 2023-25, DOR anticipates needing to hire 16 additional staff (9.00 FTE) to stand up this new unit within the Business Division to

process the refundable tax credit. These positions include 10 seasonal, part-time Public Service Representative 2 positions, three permanent Administrative Specialist 2 positions, one permanent Principal Executive Manager C, and two permanent Tax Auditor 2 positions. The anticipated fiscal impact to DOR Business Division is \$79,452 General Fund in 2021-23 and \$1,743,435 General Fund in 2023-25.

### **Bureau of Labor and Industries**

The Bureau of Labor and Industries (BOLI) is responsible for the enforcement of wage and hour laws. However, the agriculture industry has been exempted from overtime requirements and not subject to BOLI enforcement. The establishes a new enforcement requirement for BOLI and new compliance requirements for the agriculture sector. BOLI's Protective Investigation and Enforcement (PIE) unit, within the Wage and Hour Division (WHD), focuses on serving vulnerable workers in industries who may be unaware of BOLI services and relief. Because the PIE would need to conduct outreach and enforcement of the new overtime provisions within the target worker population, BOLI will need to expand the PIE unit to meet its education and enforcement responsibilities.

Since the agriculture industry has been exempt from overtime requirements, enforcing overtime protections for farmworkers will require dedicated staff within the PIE unit and direct managerial oversight of the unit. BOLI anticipates needing to hire additional staff (2.00 FTE in 2021-23, 3.50 FTE in 2023-25) to satisfy the new compliance requirements in the agriculture sector. These positions will include a permanent Principal Executive Manager D, two permanent Compliance Specialist 2 positions, and one part-time permanent Training and Development Specialist. The anticipated fiscal impact to BOLI is \$509,117 General Fund in the 2021-23 biennium and \$814,562 General Fund in the 2023-25 biennium. BOLI will need additional General Fund to support these positions. It should also be noted that the measure phases in the overtime requirements starting January 1, 2023 and will reach full coverage on January 1, 2027. When overtime requirements reach full coverage, BOLI would revisit its enforcement capacity and may need to seek additional support to meet the enforcement demands during the 2027-2029 biennium, including additional staff for investigation and adjudication of claims and administrative support to support intake, screening, and processing of an increase in wage claims or complaints stemming from the measure.

### **Other Agencies**

The measure is anticipated to have a minimal fiscal impact on the Oregon Judicial Department, Oregon Department of Agriculture, Oregon Employment Department, and Department of Administrative Services. The measure is anticipated to have no fiscal impact on the Oregon Business Development Department and the Legislative Assembly.