

Enrolled House Bill 2058

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Business and Labor for Representative Paul Holvey)

CHAPTER

AN ACT

Relating to financial assistance for agricultural overtime compensation payments; and declaring an emergency.

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

SECTION 1. (1) As used in this section:

(a) **“Department” means the Oregon Business Development Department, except when the Department of Revenue is referred to by its full title.**

(b) **“Eligible employer” means an employer doing business in 2017 North American Industry Classification System code 111, crop production, or code 112, animal production and aquaculture.**

(c) **“Tax credit” means the tax credit for agricultural overtime pay allowed under section 8, chapter 115, Oregon Laws 2022.**

(2) **The Oregon Business Development Department shall develop and administer a repayable award program for the purpose of providing financial assistance to eligible employers to mitigate the costs associated with the agricultural overtime compensation requirements under section 2, chapter 115, Oregon Laws 2022.**

(3)(a) **An eligible employer may apply for an award under the program administered under this section if the eligible employer:**

- (A) **Is eligible to apply for the tax credit; and**
- (B) **Anticipates earning not more than \$3,000,000 in gross income in the current year.**

(b) **An eligible employer may apply for an award with respect to workers recruited, solicited, supplied or employed on behalf of the eligible employer by a labor contractor licensed under ORS 658.410. A labor contractor may not apply for an award.**

(4)(a) **An award to any eligible employer may not be made under this section in an amount exceeding the lesser of:**

- (A) **The amount of overtime pay the employer anticipates incurring in the current year;**
- or
- (B) **\$40,000.**

(b) **The department may withhold from each award an origination fee in an amount not greater than 1.5 percent of the award amount to pay the expenses incurred by the department in administering the repayable award program.**

(5)(a) **The department shall prescribe an application process for awards made under this section, including forms and deadlines, and an application period to open not later than 30 days following the effective date of this 2023 Act and to remain open for 30 days.**

(b) An eligible employer seeking an award under this section must submit an application to the department including attestations that the eligible employer anticipates:

- (A) Earning not more than \$3,000,000 in gross income in the current year;
- (B) Having overtime costs in the current year;
- (C) Being an eligible employer for purposes of the tax credit; and
- (D) Applying for the tax credit.

(c) The application shall be signed under penalties for false swearing.

(6)(a) The department may consult with an applicant about the application and the applicant, after such consultation, may amend the application at any time within the application period.

(b) Not later than 45 days following the close of the application period, the department shall:

(A) Review all timely and complete applications in accordance with the process prescribed by the department;

(B) Approve or reject each application based solely on the attestations included in the application; and

(C) Make an award offer to each approved applicant.

(c) In reviewing applications, the department is not required to perform any due diligence with respect to the applicant, the applicant's ability to repay the award, any collateral or other security for repayment of the award or the applicant's creditworthiness.

(d) The department shall promptly notify all applicants of the approval or rejection of their applications and the amount of any award offer. The award amount offered and the rejection of an application may not be appealed.

(7)(a) If the total of all approved award amounts for an application period exceeds the amount of moneys available in the Agricultural Overtime Award Fund established under section 2 of this 2023 Act, the amounts shall be reduced proportionally until the total of all award amounts does not exceed the amount of moneys available.

(b) If the total of all approved award amounts for an application period does not exceed the amount of moneys available in the Agricultural Overtime Award Fund, the department shall prescribe another application period of 30 days to be administered in accordance with subsections (5) and (6) of this section.

(c) Additional application periods must open no later than 90 days following the close of the previous application period.

(d) Applications may not be reviewed and awards may not be offered after the earliest of:

(A) The date on which all moneys in the Agricultural Overtime Award Fund have been obligated under award agreements;

(B) The date on which the balance in the Agricultural Overtime Award Fund is less than \$10,000; or

(C) June 30, 2025.

(e) If the balance in the Agricultural Overtime Award Fund is less than \$10,000, all moneys in the fund shall be transferred to the General Fund.

(8)(a) The department shall seek to enter into an award agreement with each approved applicant based on the offer made pursuant to subsection (6) of this section.

(b) The award agreement must require the debtor to:

(A) Promise to use the award proceeds to mitigate the costs associated with the agricultural overtime compensation requirements under section 2, chapter 115, Oregon Laws 2022;

(B) Notify the department within 30 days if the debtor:

(i) Decides not to apply for the tax credit; or

(ii) Is notified by the Department of Revenue that the debtor is ineligible for the tax credit;

(C) Repay the amount of the award interest-free, in monthly or quarterly installments of any amount, or in a single lump sum, at any time within a term not to exceed two years; and

(D) Notwithstanding subparagraph (C) of this paragraph, repay the full amount of the award:

(i) Within 30 days following the date on which the debtor notifies the department that the debtor will not apply for the tax credit;

(ii) Within 30 days following the date on which the debtor notifies the department that the Department of Revenue has determined that the debtor is ineligible for the tax credit; or

(iii) Upon a breach of the award agreement by the debtor that is not cured within 60 days.

(9)(a) Any and all amounts of an award not fully repaid according to the award agreement shall be considered to be liquidated and delinquent and the department shall assign such amounts to the Department of Revenue for collection as provided in ORS 293.250.

(b) If the department discovers that a person willfully made a false statement or misrepresentation, or willfully failed to report a material fact, to obtain an award under this section, the department may add to the amount the person is obligated to repay a penalty not to exceed 20 percent of the principal amount of the award so obtained, plus any applicable interest and fees associated with the Department of Revenue's costs of collection.

(10) All amounts repaid to the department or the Department of Revenue under this section, including award amounts, penalties, interest, fees and any other charges, shall be transferred to the General Fund.

(11) Notwithstanding any provision of ORS 314.835 or 314.840, the Department of Revenue and the department may share information that is related to an eligible employer's application for the tax credit, the sharing of which is necessary for the effective administration of this section.

SECTION 2. (1) The Agricultural Overtime Award Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Agricultural Overtime Award Fund shall be credited to the fund.

(2) Moneys in the fund consist of:

(a) Amounts appropriated or otherwise transferred or credited to the fund by the Legislative Assembly;

(b) Earnings received on moneys in the fund; and

(c) Other amounts from any source transferred or otherwise credited to the fund.

(3) Moneys in the fund are continuously appropriated to the Oregon Business Development Department for the following purposes:

(a) Paying the actual costs incurred by the department in developing and administering section 1 of this 2023 Act; and

(b) Carrying out the provisions of section 1 of this 2023 Act in accordance with section 447 (1), chapter 110, Oregon Laws 2022.

(4) Any moneys remaining in the fund on June 30, 2025, shall be transferred to the General Fund.

SECTION 3. Sections 1 and 2 of this 2023 Act are repealed on January 2, 2027.

SECTION 4. (1) There is appropriated to the Oregon Business Development Department, for the biennium ending June 30, 2023, out of the General Fund, the lesser of the following amounts:

(a) \$10,150,000; or

(b) \$10,150,000 less any moneys allocated to the department by the Emergency Board for a program providing financial assistance to employers to mitigate the costs associated with agricultural overtime compensation requirements from moneys appropriated to the Emergency Board under section 447 (1), chapter 110, Oregon Laws 2022.

(2)(a) Moneys appropriated to the department under this section, and moneys allocated to the department by the Emergency Board for a program providing financial assistance to employers to mitigate the costs associated with agricultural overtime compensation requirements, shall be deposited in the Agricultural Overtime Award Fund established under section 2 of this 2023 Act.

(b) Of the moneys so appropriated:

(A) The Oregon Business Development Department may withhold \$150,000 for the actual costs it incurs in developing and administering section 1 of this 2023 Act; and

(B) The balance may be used solely for the purposes set forth in section 1 of this 2023 Act.

SECTION 5. Notwithstanding any other law limiting expenditures, the amount of \$10,150,000 is established for the biennium ending June 30, 2023, as the maximum limit for payment of expenses by the Oregon Business Development Department from the Agricultural Overtime Award Fund established under section 2 of this 2023 Act for:

(1) Paying the actual costs incurred by the department in developing and administering section 1 of this 2023 Act; and

(2) Carrying out the provisions of section 1 of this 2023 Act in accordance with section 447 (1), chapter 110, Oregon Laws 2022.

SECTION 6. This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on its passage.

Passed by House February 28, 2023

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

Passed by Senate March 9, 2023

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Rob Wagner, President of Senate

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

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Shemia Fagan, Secretary of State