

# House Bill 2086

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 **as introduced**.

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 or operator" means a landowner, operator, manager or other person  
8 having responsibility for exercising control over the day-to-day operation of a farm or ranch.

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

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

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

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

22 541.981. (1) An agricultural owner or operator may enter into a conservation management plan  
23 with an organization for working land to be managed in a manner that *[supports]* **maintains or**  
24 **enhances** one or more natural resource values. The conservation management plan may be com-  
25 posed of multiple components addressing different natural resource values as identified in subsection  
26 (2) of this section.

27 (2) A conservation management plan must be for the purpose of developing and implementing  
28 conservation measures or other protections for maintaining or enhancing fish or wildlife habitat,  
29 *[improving]* water quality or *[supporting]* other natural resource values in a manner consistent with  
30 the social and economic interests and abilities of the agricultural owner or operator. The plan may  
31 include provisions for addressing particular priorities related to natural resource values, including

**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 but not limited to soil, water, plants, animals, energy and human need considerations.

2 (3) A conservation management plan must:

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

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

5 (c) Be specific to the land, and account for the needs of, the agricultural owner or operator;

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

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

9 (f) Provide for regular monitoring by the organization to ensure that the agricultural owner or  
10 operator is adhering to the plan;

11 (g) Make any receipt by the agricultural owner or operator of annual payments for carrying out  
12 the plan contingent on adherence to the plan; and

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

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

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

19 (b) A watershed council; or

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

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

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

23 541.982. (1) An owner of working land may enter into a working land conservation covenant  
24 with or grant a working land conservation easement to an organization that is a holder, as defined  
25 in ORS 271.715, other than a state agency. The covenant or easement must be for the *[purpose of*  
26 *ensuring the continued use of]* **purposes of preserving and protecting** the land for agricultural  
27 purposes while maintaining or enhancing fish or wildlife habitat, *[improving]* water quality or *[sup-*  
28 *porting]* other natural resource values on the land. A working land conservation covenant must be  
29 for a term of years that is established as permissible in *[Oregon Agricultural Heritage Commission]*  
30 rules **described under subsection (6) of this section.**

31 (2) In addition to the purposes required under subsection (1) of this section, a working land  
32 conservation covenant or working land conservation easement may provide for carrying out any  
33 purposes of a conservation easement, as defined in ORS 271.715. The covenant or easement must  
34 provide for carrying out those additional purposes in a manner consistent with ORS 271.715 to  
35 271.795.

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

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

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

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

1 (5) An application under subsection (4) of this section may be combined with an application  
 2 under ORS 541.981 for a grant to fund **the development, implementation, carrying out or mon-**  
 3 **itoring of** a conservation management plan associated with the working land conservation covenant  
 4 or working land conservation easement.

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

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

9 541.984. (1) The Oregon Watershed Enhancement Board shall establish programs to provide  
 10 grants from the Oregon Agricultural Heritage Fund for the purposes of:

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

13 [*(b) Funding the purchasing, implementing, carrying out or monitoring of conservation management*  
 14 *plans, working land conservation covenants or working land conservation easements described in ORS*  
 15 *541.981 and 541.982; and*]

16 **(b)(A) Funding the development, implementation, carrying out or monitoring of conser-**  
 17 **vation management plans under ORS 541.981; or**

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

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

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

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

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

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

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

31 (3) The [*board and the commission, shall jointly*] **commission shall** appoint one or more techni-  
 32 cal committees to evaluate and rank conservation management plans, working land conservation  
 33 covenants and working land conservation easements described in applications filed under ORS  
 34 541.981 and 541.982. The system used by the technical committee or committees shall provide for the  
 35 ranking of conservation management plans to be separate from the ranking of working land con-  
 36 servation covenants and working land conservation easements. The ranking for a plan, covenant or  
 37 easement shall be based on criteria that include, but need not be limited to:

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

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

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

44 (d) The capacity of the organization that filed the application to enter into a conservation  
 45 management plan[, *accept*] **or** a working land conservation covenant or **to accept** working land

1 conservation easement, and the competence of the organization;

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

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

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

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

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

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

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

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

24 (7)(a) Except as provided in **paragraph (b) of** this subsection, an organization that receives a  
 25 grant from the board for a conservation management plan, or an agricultural owner or operator  
 26 receiving payments of moneys from an organization grant regarding a conservation management  
 27 plan, may receive cash contributions, other financial assistance, in-kind services or investments,  
 28 rental or easement payments, tax benefits or other benefits from a federal, state or private entity  
 29 in return for practices related to the *[purchasing, implementing]* **development, implementation,**  
 30 carrying out or monitoring of the conservation management plan.

31 (b) The board or an organization grant may not<sup>1</sup>*[, however,]* provide payments that duplicate any  
 32 federal, state or private payments for the same measures directed to maintaining or enhancing fish  
 33 or wildlife habitat, *[improving]* water quality or *[supporting]* other natural resource values within the  
 34 **conservation management** plan.

35 (8) An organization that receives a grant from the board for a working land conservation  
 36 covenant or a working land conservation easement, or an owner of working land that enters into  
 37 a working land conservation covenant or grants a working land conservation easement, may receive  
 38 cash contributions, other financial assistance, in-kind services or *[other forms of investment from any*  
 39 *public or private sources for purposes of purchasing, implementing,]* **investments, rental or ease-**  
 40 **ment payments, tax benefits or other benefits from a federal, state or private entity in re-**  
 41 **turn for practices related to the purchase, implementation,** carrying out or monitoring of the  
 42 covenant or easement.

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

44 541.988. (1) In accordance with applicable provisions of ORS chapter 183, the Oregon Agricul-  
 45 tural Heritage Commission *[may adopt rules necessary for the administration of the laws that the*

1 *commission is charged with administering]* **shall assist the Oregon Watershed Enhancement**  
 2 **Board in the adoption and administration of board rules for carrying out programs under**  
 3 **ORS 541.977 to 541.989.**

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

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

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

15 541.989. (1) The Oregon Agricultural Heritage Commission shall:

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

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

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

24 [(d) Review and consider the recommendations of technical committees appointed under ORS  
 25 541.984;]

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

27 **(2) The commission shall:**

28 [(f) (a) Provide conservation management plan, working land conservation covenant and work-  
 29 ing land conservation easement funding recommendations to the board based on the availability of  
 30 funding from the Oregon Agricultural Heritage Fund; and

31 [(g) (b) Provide funding recommendations to the Legislative Assembly, or recommendations for  
 32 grant funding to the board, to provide training and support to [*owners of working land*] **agricultural**  
 33 **owners or operators**, or persons advising [*owners of working land*] **agricultural owners or oper-**  
 34 **ators**, regarding succession planning for [*the*] **working** lands.

35 [(2)] **(3)** The commission's recommendations for funding under subsection [(1)(g)] **(2)(b)** of this  
 36 section may include recommendations for funding succession planning programs through the Oregon  
 37 State University Extension Service only if the university has presented the commission with a pro-  
 38 gram proposal for review. If a commission recommendation for funding succession planning programs  
 39 through the university extension service is adopted, the university shall provide the commission with  
 40 an annual report regarding each program.

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

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

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

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