

# Enrolled House Bill 3249

Sponsored by Representatives CLEM, WITT, BUEHLER; Representatives FAHEY, GOMBERG, HELM, HUFFMAN, JOHNSON, KENNEMER, LININGER, LIVELY, MARSH, MCLAIN, NEARMAN, NOBLE, POWER, SMITH DB, SMITH G, SOLLMAN, WHISNANT, Senators BEYER, FREDERICK, HANSELL, ROBLAN, THOMSEN

CHAPTER .....

## AN ACT

Relating to land conservation; and declaring an emergency.

Whereas Oregon’s rich agricultural heritage and diverse farm and ranch lands are the cornerstone of Oregon’s rural communities and support a variety of natural resource functions; and

Whereas the economy of Oregon developed through a long tradition of land stewardship that supports both agricultural and natural systems; and

Whereas over one-fourth of Oregon’s 63 million acres are private working lands creating agricultural production that is valued at \$5.4 billion and is the second largest economic driver in Oregon; and

Whereas well managed agricultural land supports valuable fish and wildlife habitat and enhances other natural resources; and

Whereas, despite Oregon’s unique land use protections, Oregon farms and ranches and the social, economic and ecological values supported by those farms and ranches are increasingly challenged by fragmentation through new land uses, conversion to nonfarm use and the complexity of regulations and planning for generational transfers; and

Whereas the protection of Oregon agricultural lands and their associated natural resource values can be enhanced by flexible voluntary tools tailored to the needs of individual farmers or ranchers; and

Whereas the use of voluntary tools can leverage federal moneys to protect and enhance working lands while maintaining or enhancing valuable fish and wildlife habitat and other natural resources; now, therefore,

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

**SECTION 1. As used in sections 1 to 10 of this 2017 Act:**

**(1) “Agricultural owner 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 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 the use of the land for agricultural production and for the maintenance or en-**

hancement of fish and 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 the land for agricultural production and for the maintenance or enhancement of fish and wildlife habitat, improvement of water quality or support of other natural resource values.

**SECTION 2.** (1) The Oregon Agricultural Heritage Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Oregon Agricultural Heritage Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Oregon Watershed Enhancement Board for the purpose of carrying out sections 1 to 10 of this 2017 Act.

(2) The board may accept contributions to the fund from any public or private source and may agree to any conditions for the expenditure of those contributions that are consistent with the purposes of the fund.

**SECTION 3.** (1) The Oregon Watershed Enhancement Board may expend moneys from the Oregon Agricultural Heritage Fund to:

- (a) Carry out the programs described in section 6 of this 2017 Act;
- (b) Pay reimbursements and staff support expenses associated with the activities of the Oregon Agricultural Heritage Commission established under section 7 of this 2017 Act;
- (c) Provide succession planning programs with funding recommended by the commission under section 10 of this 2017 Act; and
- (d) Pay the administrative expenses of the board for carrying out sections 1 to 10 of this 2017 Act.

(2) The amount paid from the fund during a biennium for reimbursements and expenses described in subsection (1)(b) and (d) of this section may not exceed 12 percent of the moneys credited to the fund during that biennium.

**SECTION 4.** (1) An agricultural owner 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.

(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 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 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 or operator is adhering to the plan;
- (g) Make any receipt by the agricultural owner 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, 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.

**SECTION 5.** (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 the land for agricultural purposes while 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.

(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 the covenant or 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 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 section 4 of this 2017 Act for a grant to fund a conservation management plan associated with the working land conservation covenant or working land conservation easement.

**SECTION 6.** (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 with succession planning for those 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 sections 4 and 5 of this 2017 Act; and

(c) Providing development funding or technical assistance to organizations that enter into or propose to enter into agreements resulting in conservation management plans, or that accept or propose to accept working land conservation covenants or working land conservation easements.

(2) The board, after consultation with the Oregon Agricultural Heritage Commission established in section 7 of this 2017 Act, shall adopt rules that establish a process for submitting and processing applications for grants under sections 4 and 5 of this 2017 Act. 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 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 sections 4 and 5 of this 2017 Act. 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 agricultural outcomes, benefits or other investment gains;

(d) The capacity of the organization that filed the application to enter into a conservation management plan, accept a working land conservation covenant or 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 conservation 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 include 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 conservation covenant or working land conservation easement described in sections 4 and 5 of this 2017 Act 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) Except as provided in this subsection, an organization that receives a grant from the board for a conservation management plan, or an agricultural owner 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 investments, rental or easement payments, tax benefits or other benefits from a federal, state or private entity in return for practices related to the purchasing, implementing, carrying out or monitoring of the conservation management plan. 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 plan.

(8) An organization that receives a grant from the board for a working land conservation covenant or working land conservation easement, or an owner of working land that enters into a working land conservation covenant or grants a working land conservation easement, may receive cash contributions, other financial assistance, in-kind services or other forms of investment from any public or private sources for purposes of purchasing, implementing, carrying out or monitoring of the covenant or easement.

**SECTION 7.** (1) The Oregon Agricultural Heritage Commission is established, consisting of 12 members appointed by the Oregon Watershed Enhancement Board. The board shall appoint one board member to serve on an ex officio basis as a nonvoting member of the commission. The board shall appoint 11 voting members from among persons recommended as provided in subsection (2) of this section.

(2)(a) Four members shall be persons recommended by the State Board of Agriculture who are actively engaged in farming or ranching. The members must represent diverse types of agricultural commodities and be from geographically diverse areas of this state.

(b) One member shall be recommended by the Director of the Oregon State University Extension Service.

(c) Two members shall be persons recommended by the State Fish and Wildlife Commission who have expertise regarding fish and wildlife habitat.

(d) One member shall be a person recommended by the State Board of Agriculture who has expertise in agricultural water quality.

(e) One member shall be a person recommended by the Land Conservation and Development Commission who has expertise in conservation easements and similar land transfers.

(f) One member shall be a person selected by the Oregon Watershed Enhancement Board who is a representative of natural resource value interests.

(g) One member shall be a person selected by the Oregon Watershed Enhancement Board who is a representative of Indian tribal interests.

(3) The term of office of each voting member of the Oregon Agricultural Heritage Commission is four years, but the Oregon Watershed Enhancement Board may remove a member if requested by the authority that recommended the member. Before the term of a member expires, the authority that recommended the member shall make recommendations to the board regarding the appointment of a successor. An authority may recommend the reappointment of a member, but a member may not serve more than two consecutive terms. If there is a vacancy for any cause, the authority that recommended the vacating member shall make recommendations to the board regarding the appointment of a successor to serve for the unexpired term.

**SECTION 8.** (1) The Oregon Agricultural Heritage Commission shall select one of its voting members as chairperson and another voting member as vice chairperson, for terms and with duties and powers necessary for the performance of the functions of the offices as the commission determines.

(2) A majority of the voting members of the commission constitutes a quorum for the transaction of business.

(3) The commission shall meet at least once every 12 months at a time and place determined by the Oregon Watershed Enhancement Board. The commission also may meet at other times and places specified by the call of the chairperson or of a majority of the voting members of the commission.

(4) Members of the commission are not entitled to compensation but, at the discretion of the board, may be reimbursed from funds available in the Oregon Agricultural Heritage Fund 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.

(5) The board shall provide staff support for the work of the commission.

**SECTION 9.** (1) In accordance with applicable provisions of ORS chapter 183, the Oregon Agricultural Heritage Commission may adopt rules necessary for the administration of the laws that the commission is charged with administering.

(2) The commission may establish any advisory or technical committee the commission considers necessary to aid and advise the commission in the performance of its functions. The committees may be continuing or temporary committees. The commission shall determine the representation, 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 10.** (1) The Oregon Agricultural Heritage Commission shall:

(a) Assist the Oregon Watershed Enhancement Board with the development of rules for the administration of programs under sections 1 to 10 of this 2017 Act;

(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 section 5 of this 2017 Act;

(c) Recommend policies and priorities for use by the 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 section 4 or 5 of this 2017 Act;

(d) Review and consider the recommendations of technical committees appointed under section 6 of this 2017 Act;

(e) Consult with the board concerning grant applications;

(f) Provide conservation management plan, working land conservation covenant and working land conservation easement funding recommendations to the board based on the availability of funding from the Oregon Agricultural Heritage Fund; and

(g) 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, or persons advising owners of working land, regarding succession planning for the lands.

(2) The commission's recommendations for funding under subsection (1)(g) 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 11.** (1) As used in this section "working land" has the meaning given that term in section 1 of this 2017 Act.

(2) The Legislative Policy and Research Director, in consultation with the Department of Revenue and the State Department of Agriculture, shall conduct a study examining financial incentives, incremental tax reduction and tax elimination with regard to land transfer and succession planning for working land. The study must include, but need not be limited to, the identification of potential tax incentives and financial management tools that may improve the likelihood for land transfer and succession planning that supports the continued use of working land for agricultural operations while maintaining or enhancing fish or wildlife habitat, improving water quality or supporting other natural resource values of the land.

(3) In conducting the study, the director shall consult with state agencies and members of the public that have an interest in policy considerations related to the identification and proposal of potential tax incentives and financial management tools.

(4) The director shall complete the study and report findings and any recommendations to an interim committee of the Legislative Assembly related to natural resources, in the manner provided by ORS 192.245, no later than September 15, 2018.

**SECTION 12.** Notwithstanding the term of office specified by section 7 of this 2017 Act, of the members first appointed to the Oregon Agricultural Heritage Commission:

(1) One of the members recommended by the State Board of Agriculture who is actively engaged in farming or ranching shall serve for a term ending January 1, 2019.

(2) One of the members recommended by the State Board of Agriculture who is actively engaged in farming or ranching shall serve for a term ending January 1, 2020.

(3) One of the members recommended by the State Board of Agriculture who is actively engaged in farming or ranching shall serve for a term ending January 1, 2021.

(4) One of the members recommended by the State Board of Agriculture who is actively engaged in farming or ranching shall serve for a term ending January 1, 2022.

(5) One of the members recommended by the State Fish and Wildlife Commission shall serve for a term ending January 1, 2019.

(6) One of the members recommended by the State Fish and Wildlife Commission shall serve for a term ending January 1, 2021.

(7) The member recommended by the Director of the Oregon State University Extension Service shall serve a term ending January 1, 2020.

(8) The member selected by the Oregon Watershed Enhancement Board who is a representative of natural resource value interests shall serve for a term ending January 1, 2020.

(9) The member recommended by the State Board of Agriculture who has expertise in agricultural water quality shall serve for a term ending January 1, 2021.

(10) The member recommended by the Land Conservation and Development Commission shall serve for a term ending January 1, 2022.

(11) The member selected by the Oregon Watershed Enhancement Board who is a representative of Indian tribal interests shall serve for a term ending January 1, 2022.

**SECTION 13.** Notwithstanding section 3 of this 2017 Act, the amounts paid from the Oregon Agricultural Heritage Fund for the administrative expenses of the Oregon Watershed Enhancement Board and the reimbursements and staff support expenses of activities associated with the Oregon Agricultural Heritage Commission incurred on or before June 30, 2019, may exceed 12 percent of the moneys credited to the fund during the biennium ending June 30, 2019.

**SECTION 14.** Sections 1 to 10 of this 2017 Act apply to agreements and interests in land that:

(1) Are created on or after January 1, 2018; or

(2) Are the subject of an application for funding from the Oregon Agricultural Heritage Fund.

**SECTION 15.** Sections 1 to 10 and 12 of this 2017 Act become operative January 1, 2018.

**SECTION 16.** In addition to and not in lieu of any other appropriation, there is appropriated to the Oregon Watershed Enhancement Board, for the biennium beginning July 1, 2017, out of the General Fund, the amount of \$190,000 which may be expended for carrying out sections 1 to 10 of this 2017 Act.

**SECTION 17.** This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect July 1, 2017.

**Passed by House July 5, 2017**

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate July 7, 2017**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2017

**Approved:**

.....M,....., 2017

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2017

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Dennis Richardson, Secretary of State