

House Bill 2646

Sponsored by COMMITTEE ON REVENUE

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**.

Expands eligibility for certain forestland special assessments to include certain lands used for intensively managed hardwood timber production. Lengthens rotation cycle for harvesting intensively managed hardwood timber on lands eligible for farm use special assessment from 12 years to 20 years.

Applies to property tax years beginning on or after July 1, 2010.

A BILL FOR AN ACT

1
2 Relating to special assessment; creating new provisions; amending ORS 215.203, 307.320, 308A.056,
3 308A.062, 308A.068, 308A.071, 308A.077, 308A.113, 308A.116, 315.104, 315.141, 316.045, 317.063,
4 321.005, 321.267, 321.359, 321.824, 321.842 and 469A.025; and repealing ORS 321.390 and 321.855.

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

6 **SECTION 1.** ORS 308A.056 is amended to read:

7 308A.056. (1) As used in ORS 308A.050 to 308A.128, "farm use" means the current employment
8 of land for the primary purpose of obtaining a profit in money by:

9 (a) Raising, harvesting and selling crops;

10 (b) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or honeybees
11 or the produce thereof;

12 (c) Dairying and selling dairy products;

13 (d) Stabling or training equines, including but not limited to providing riding lessons, training
14 clinics and schooling shows;

15 (e) Propagating, cultivating, maintaining or harvesting aquatic species and bird and animal
16 species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission;

17 (f) On-site constructing and maintaining equipment and facilities used for the activities described
18 in this subsection;

19 (g) Preparing, storing or disposing of, by marketing or otherwise, the products or by-products
20 raised for human or animal use on land described in this section; or

21 (h) Using land described in this section for any other agricultural or horticultural use or animal
22 husbandry or any combination thereof.

23 (2) "Farm use" does not include the use of land subject to timber and forestland taxation under
24 ORS chapter 321, except land used exclusively for growing cultured Christmas trees or land [*de-*
25 *scribed in ORS 321.267 (3) or 321.824 (3) (relating to land used to grow certain hardwood timber, in-*
26 *cluding hybrid cottonwood).*] **used exclusively to grow certain intensively managed hardwood**
27 **timber.**

28 (3) For purposes of this section, land is currently employed for farm use if the land is:

29 (a) Farmland, the operation or use of which is subject to any farm-related government program;

30 (b) Land lying fallow for one year as a normal and regular requirement of good agricultural

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 husbandry;

2 (c) Land planted in orchards or other perennials, other than land specified in paragraph (d) of
 3 this subsection, prior to maturity;

4 (d) Land not in an exclusive farm use zone that has not been eligible for assessment at special
 5 farm use value in the year prior to planting the current crop and has been planted in orchards,
 6 cultured Christmas trees or vineyards for at least three years;

7 (e) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically
 8 tillable nor grazeable, lying in or adjacent to and in common ownership with farm use land and that
 9 is not currently being used for any economic farm use;

10 (f) Except for land under a single family dwelling, land under buildings supporting accepted
 11 farming practices, including the processing facilities allowed by ORS 215.213 (1)(x) and 215.283 (1)(u)
 12 and the processing of farm crops into biofuel as commercial activities in conjunction with farm use
 13 under ORS 215.213 (2)(c) and 215.283 (2)(a);

14 (g) Water impoundments lying in or adjacent to and in common ownership with farm use land;

15 (h) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the
 16 owner of land specially valued for farm use even if the land constituting the woodlot is not utilized
 17 in conjunction with farm use;

18 (i) Land lying idle for no more than one year when the absence of farming activity is the result
 19 of the illness of the farmer or a member of the farmer's immediate family, including injury or
 20 infirmity, regardless of whether the illness results in death;

21 (j) Land [*described under ORS 321.267 (3) or 321.824 (3) (relating to land)*] used to grow certain
 22 **intensively managed** hardwood timber, including hybrid cottonwood[];

23 (k) Land used for the primary purpose of obtaining a profit in money by breeding, raising,
 24 kenneling or training greyhounds for racing; or

25 (L) Land used for the processing of farm crops into biofuel, as defined in ORS 315.141, if:

26 (i) Only the crops of the landowner are being processed;

27 (ii) The biofuel from all of the crops purchased for processing into biofuel is used on the farm
 28 of the landowner; or

29 (iii) The landowner is custom processing crops into biofuel from other landowners in the area
 30 for their use or sale.

31 (4) As used in this section:

32 (a) "Accepted farming practice" means a mode of operation that is common to farms of a similar
 33 nature, necessary for the operation of these similar farms to obtain a profit in money and custom-
 34 arily utilized in conjunction with farm use.

35 (b) "Cultured Christmas trees" means trees:

36 (A) Grown on lands used exclusively for that purpose, capable of preparation by intensive cul-
 37 tivation methods such as plowing or turning over the soil;

38 (B) Of a marketable species;

39 (C) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as
 40 specified by the Agricultural Marketing Service of the United States Department of Agriculture; and

41 (D) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed
 42 and brush control and one or more of the following practices:

43 (i) Basal pruning;

44 (ii) Fertilizing;

45 (iii) Insect and disease control;

- 1 (iv) Stump culture;
- 2 (v) Soil cultivation; or
- 3 (vi) Irrigation.

4 (c) **“Intensively managed hardwood timber” means hybrid cottonwood or other trees**
 5 **grown for the purpose of producing hardwood timber if:**

6 (A) **The land that is used to grow the timber is prepared using intensive cultivation**
 7 **methods and is cleared of competing vegetation for at least three years after tree planting;**

8 (B) **The timber is of a species marketable as fiber for inclusion in the class and propor-**
 9 **tion of materials for manufacturing paper or sawed timber products;**

10 (C) **The timber is harvested on a rotation cycle within 20 years after planting; and**

11 (D) **The timber and land that is used to grow the timber are subject to intensive agri-**
 12 **cultural practices such as fertilization, insect and disease control, cultivation and irrigation.**

13 **SECTION 2.** ORS 308A.062 is amended to read:

14 308A.062. (1) Any land that is within an exclusive farm use zone and that is used exclusively for
 15 farm use shall qualify for farm use special assessment under ORS 308A.050 to 308A.128, unless dis-
 16 qualified under other provisions of law.

17 (2) Whether farmland qualifies for special assessment under this section shall be determined as
 18 of January 1 of the assessment year. However, if land so qualified becomes disqualified prior to July
 19 1 of the same assessment year, the land shall be valued under ORS 308.232, at its real market value
 20 as defined by law without regard to this section, and shall be assessed at its assessed value under
 21 ORS 308.146 or as otherwise provided by law. If the land becomes disqualified on or after July 1,
 22 the land shall continue to qualify for special assessment as provided in this section for the current
 23 tax year.

24 (3) **The owner of land used for growing intensively managed hardwood timber, as defined**
 25 **in ORS 308A.056, within an exclusive farm use zone shall notify the county assessor if the**
 26 **rotation cycle on any portion of the land exceeds 20 years.**

27 **SECTION 3.** ORS 308A.068 is amended to read:

28 308A.068. (1) Any land that is not within an exclusive farm use zone but that is being used, and
 29 has been used for the preceding two years, exclusively for farm use shall qualify for farm use special
 30 assessment:

31 (a) If the land meets the income requirements set forth in ORS 308A.071; and

32 (b) Upon compliance with the application requirements set forth in ORS 308A.077.

33 (2)(a) The provisions of this section shall not apply to any land with respect to which the owner
 34 has granted, and has outstanding, any lease or option to buy the surface rights for other than farm
 35 use.

36 (b) This subsection does not apply in the case of a lease or option to buy surface rights:

37 (A)(i) For the exploration of geothermal resources, as defined by ORS 522.005, mineral resources
 38 or other subsurface resources; or

39 (ii) For the use of land for hunting, fishing, camping or other recreational use; and

40 (B) If the exploration, use or possession engaged in pursuant to the lease or option to buy does
 41 not interfere with the farm use of the farmland.

42 (3) Whether farmland qualifies for special assessment under this section shall be determined as
 43 of January 1 of the assessment year. However, if land so qualified becomes disqualified prior to July
 44 1 of the same assessment year, the land shall be valued under ORS 308.232, at its real market value
 45 as defined by law without regard to this section, and shall be assessed at its assessed value under

1 ORS 308.146 or as otherwise provided by law. If the land becomes disqualified on or after July 1,
 2 the land shall continue to qualify for special assessment as provided in this section for the current
 3 tax year.

4 **(4) Notwithstanding subsection (1) of this section, land that is used for growing inten-**
 5 **sively managed hardwood timber, as defined in ORS 308A.056, need not meet the two-year**
 6 **farm use requirements of this section to qualify for farm use special assessment.**

7 **SECTION 4.** ORS 308A.071 is amended to read:

8 308A.071. (1) For purposes of ORS 308A.050 to 308A.128, farmland or a farm parcel that is not
 9 within an area zoned for exclusive farm use is not used exclusively for farm use unless all of the
 10 prerequisites of subsections (2) to (5) of this section are met.

11 (2)(a) Except as provided in subsection (6) **or** (7) of this section, in three out of the five full
 12 calendar years immediately preceding the assessment date, the farmland or farm parcel was operated
 13 as a part of a farm unit that has produced a gross income from farm uses in the following amount
 14 for a calendar year:

15 (A) If the farm unit consists of 6-1/2 acres or less, the gross income from farm use shall be at
 16 least \$650.

17 (B) If the farm unit consists of more than 6-1/2 acres but less than 30 acres, the gross income
 18 from farm use shall be at least equal to the product of \$100 times the number of acres and any
 19 fraction of an acre of land included.

20 (C) If the farm unit consists of 30 acres or more, the gross income from farm use shall be at least
 21 \$3,000.

22 (b) For purposes of determining the number of acres to be considered under paragraph (a) of this
 23 subsection, the land described in ORS 308A.056 (3) and the land, not exceeding one acre, used as a
 24 homestead shall not be included.

25 (c) If a farm parcel is operated as part of a farm unit and the farmland of the farm unit is not
 26 all under the same ownership, the gross income requirements applicable to the farm parcel shall be
 27 as provided under paragraph (a) of this subsection. In addition, the gross income from farm use of
 28 a farm parcel described under this paragraph must be at least:

29 (A) One-half of the gross income requirements described under paragraph (a) of this subsection
 30 that would be required if the farm parcel were the only farmland of the farm unit; or

31 (B) A cash or net share crop rental of one-quarter of the gross income requirements described
 32 under paragraph (a) of this subsection that would be required if the farm parcel were the only
 33 farmland of the farm unit. For purposes of this subparagraph, "net share crop rental" means the
 34 value of any crop received by the owner of the farm parcel less any costs borne by the owner of the
 35 farm parcel.

36 (3) Excise or income tax returns are filed with the Department of Revenue for purposes of ORS
 37 chapter 316, 317 or 318 by the farmland owner or the operator of the farm unit that include a
 38 Schedule F and, if applicable, by the owner of a farm parcel that include a schedule or schedules
 39 showing rental income received by the owner of the farm parcel, during the years to which the in-
 40 come requirements of this section apply.

41 (4) Upon request, a copy of the returns or the schedules of the returns showing the gross income
 42 received from farm use is furnished by the taxpayer to the county assessor.

43 (5) The burden of proving the gross income of the farm unit for the years described in subsection
 44 (2) of this section is upon the person claiming special assessment for the land.

45 (6) The failure of a farm unit to produce the amount of gross income required by subsection (2)

1 of this section shall not prevent the farm unit from meeting the qualifications of this section if:

2 (a) The failure is because:

3 (A) The effect of flooding substantially precludes normal and reasonable farming during the
4 year; or

5 (B) Severe drought conditions are declared under ORS 536.700 to 536.780; and

6 (b) The farm unit produces the required amount of gross income in three out of the last five
7 nonflood or nondrought years.

8 **(7) If an application to qualify land used for intensively managed hardwood timber pro-**
9 **duction for special assessment is filed under ORS 308A.077, the owner shall have seven years**
10 **beginning with the first year of classification to meet the income requirements of this sec-**
11 **tion. Upon completion of the seventh year, the owner shall comply with the income require-**
12 **ments of subsection (2) of this section.**

13 [(7)] (8) As used in this section:

14 (a) "Farm parcel" means the contiguous land under the same ownership, whether assessed as
15 one or more than one tax lot.

16 (b) "Gross income" includes the value of any crop or livestock that is used by the owner per-
17 sonally or in the farming operation of the owner, but does not include:

18 (A) The value of any crop or livestock so used unless records accurately reflecting both value
19 and use of the crop or livestock are kept by the owner in a manner consistent with generally ac-
20 cepted accounting principles; and

21 (B) The purchase cost of livestock.

22 (c) **"Intensively managed hardwood timber" has the meaning given that term in ORS**
23 **308A.056.**

24 [(c)] (d) "Owner" or "ownership" means any person described under ORS 308A.077 (2)(b)(A), (B),
25 (D) or (E) and spouse or other person who is also an owner as tenant in common or other joint
26 ownership interest.

27 **SECTION 5.** ORS 308A.077 is amended to read:

28 308A.077. (1) Any owner of nonexclusive farm use zone farmland entitled to special assessment
29 under ORS 308A.068 must, to secure the assessment, make application therefor to the county
30 assessor on or before April 1 of the first year in which the assessment is desired. **However, if the**
31 **land is or becomes land used for growing intensively managed hardwood timber, as defined**
32 **in ORS 308A.056:**

33 (a) **The owner must file the application on or before April 1 of the following year, if the**
34 **change in use takes place on or after July 1.**

35 (b) **The owner must file the application on or before August 1 of the same year, if the**
36 **change in use takes place prior to July 1.**

37 (2)(a) The application shall be made upon forms prepared by the Department of Revenue and
38 supplied by the county assessor and shall include any information as may reasonably be required to
39 determine the entitlement of the applicant.

40 (b) The application may be signed by any one of the following:

41 (A) The owner of the farmland who holds an estate therein in fee simple or for life.

42 (B) Any one of tenants in common or tenants by the entirety, holding an estate in the farmland
43 in fee simple or for life.

44 (C) Any person of legal age, duly authorized in writing to sign an application on behalf of any
45 person described in subparagraph (A) or (B) of this paragraph.

1 (D) The guardian or conservator of an owner, or the executor or administrator of an owner's
2 estate.

3 (E) The purchaser of the fee simple or life estate of an owner under a contract of sale.

4 (c) The assessor or the deputy of the assessor may not approve an application signed by a per-
5 son whose authority to sign is not a matter of public record unless there is filed with the assessor
6 a true copy of the deed, contract of sale, power of attorney or other appropriate instrument evi-
7 dencing the signer's interest or authority. When filed with the assessor only, such instrument shall
8 not constitute a public record.

9 (3) There shall be attached to each application the affidavit or affirmation of the applicant that
10 the statements contained therein are true.

11 **(4) The owner of land used for growing intensively managed hardwood timber, as defined**
12 **in ORS 308A.056, in a nonexclusive farm use zone shall notify the county assessor if the ro-**
13 **rotation cycle on any portion of the land exceeds 20 years.**

14 **SECTION 6.** ORS 308A.113 is amended to read:

15 308A.113. (1) Land within an exclusive farm use zone shall be disqualified from special assess-
16 ment under ORS 308A.062 by:

17 (a) Removal of the special assessment by the assessor upon the discovery that the land is no
18 longer being used as farmland;

19 (b) Removal of the land from any exclusive farm use zone; [or]

20 (c) Establishing a nonfarm dwelling on the land under ORS 215.236[.]; **or**

21 **(d) Qualification as western Oregon designated forestland under ORS 321.359 or quali-**
22 **fication as eastern Oregon designated forestland under ORS 321.842.**

23 (2) Notwithstanding subsection (1)(a) of this section, the county assessor shall not disqualify land
24 that has been receiving special assessment if the land is not being farmed because:

25 (a) The effect of flooding substantially precludes normal and reasonable farming during the year;
26 or

27 (b) Severe drought conditions are declared under ORS 536.700 to 536.780.

28 (3)(a) Notwithstanding ORS 308.210, 308A.062, 311.405 or 311.410, if disqualification occurs as a
29 result of the discovery that the land is no longer in farm use, then, regardless of when during the
30 assessment year discovery is actually made, disqualification by the county assessor shall occur as
31 of the January 1 assessment date of the assessment year in which discovery is made.

32 (b) Paragraph (a) of this subsection shall apply only if the notice of disqualification required
33 under ORS 308A.718 is mailed by the county assessor prior to August 15 of the tax year for which
34 the disqualification of the land is asserted.

35 (4) Upon disqualification, additional taxes shall be determined as provided in ORS 308A.700 to
36 308A.733.

37 **SECTION 7.** ORS 308A.116 is amended to read:

38 308A.116. (1) Nonexclusive farm use zone farmland qualified for special assessment under ORS
39 308A.068 shall be disqualified from such special assessment upon:

40 (a) Notification by the taxpayer to the assessor to remove the special assessment;

41 (b) Sale or transfer to an ownership making it exempt from ad valorem property taxation;

42 (c) Removal of the special assessment by the assessor upon the discovery that the land is no
43 longer in farm use for failure to meet the income requirements under ORS 308A.071 or is no longer
44 in farm use; [or]

45 (d) The act of recording a subdivision plat under the provisions of ORS chapter 92[.]; **or**

(e) Qualification as western Oregon designated forestland under ORS 321.359 or qualification as eastern Oregon designated forestland under ORS 321.842.

(2) The county assessor shall not disqualify the land that has been receiving special assessment upon the sale or transfer to a new owner or transfer by reason of death of a former owner to a new owner if the land continues to be used solely for farm use.

(3) When, for any reason, the land or any portion thereof ceases to be used solely for farm use, the owner at the time of the change in use shall notify the assessor of the change prior to the next January 1 assessment date.

(4) If under subsection (1)(d) of this section, the county assessor disqualifies land for special assessment upon the act of platting the land, the land, or a part of the land, may be requalified for special assessment upon:

(a) Payment of all additional tax, interest or penalty that remains due and owing on the land;

(b) Submission by the owner of an application for special assessment under ORS 308A.077;

(c) Meeting all of the qualifications for farm use special assessment under ORS 308A.068; and

(d) Meeting the requirements, if any, of applicable local government zoning ordinances with regard to minimum lot or parcel acreage for farm use.

(5) The county assessor shall not disqualify land that has been receiving special assessment if the land is not being farmed because:

(a) The effect of flooding substantially precludes normal and reasonable farming during the year; or

(b) Severe drought conditions are declared under ORS 536.700 to 536.780.

(6)(a) Notwithstanding ORS 308.210, 308A.068, 311.405 or 311.410, if disqualification occurs as a result of the discovery that the land is no longer in farm use, then, regardless of when during the assessment year discovery is actually made, disqualification by the county assessor shall occur as of the January 1 assessment date of the assessment year in which discovery is made.

(b) Paragraph (a) of this subsection shall apply only if the notice of disqualification required under ORS 308A.718 is mailed by the county assessor prior to August 15 of the tax year for which the disqualification of the land is asserted.

(7) Upon disqualification, additional taxes shall be determined as provided in ORS 308A.700 to 308A.733.

SECTION 8. ORS 321.267 is amended to read:

321.267. The following forestland may not be assessed under ORS 321.257 to 321.390:

(1) Forestland assessed by the Department of Revenue pursuant to ORS 308.505 to 308.665, 308.805 to 308.820 and 308.990.

(2) Except as provided in ORS 321.347, land that is prepared using intensive cultivation and tilling and on which all unwanted plant growth is controlled continuously for the exclusive purpose of growing Christmas trees.

[(3) Land used for the purpose of growing hardwood timber, including but not limited to hybrid cottonwood, if:]

[(a) The land is prepared using intensive cultivation methods and is cleared of competing vegetation for at least three years after tree planting;]

[(b) The timber is of a species marketable as fiber for inclusion in the furnish for manufacturing paper products;]

[(c) The timber is harvested on a rotation cycle within 12 years after planting; and]

[(d) The land and timber are subject to intensive agricultural practices such as fertilization, insect

1 *and disease control, cultivation and irrigation.]*

2 [(4)] (3) Small tract forestland qualified under ORS 321.700 to 321.754 and timber harvested from
3 small tract forestland qualified under ORS 321.700 to 321.754.

4 **SECTION 9.** ORS 321.359 is amended to read:

5 321.359. (1)(a) When land has once been designated as forestland either as a result of an appli-
6 cation being filed therefor or through the application of ORS 321.347 (3) or (4), it shall be valued
7 as such until the assessor removes the forestland designation under paragraph (b) of this subsection.

8 (b) The county assessor shall remove the forestland designation upon:

9 (A) Notification by the taxpayer to the assessor to remove the designation;

10 (B) Sale or transfer to an ownership making it exempt from ad valorem property taxation;

11 (C) Discovery by the assessor that the land is no longer forestland; *[or]*

12 (D) The act of recording a subdivision plat under ORS chapter 92[.]; **or**

13 **(E) Qualification for farm use special assessment under ORS 308A.050 to 308A.128.**

14 (2) A taxpayer whose application filed under ORS 321.358 has been denied in whole or in part,
15 or a taxpayer whose forestland has had the designation thereof removed in whole or in part, may
16 appeal to the tax court within the time and in the manner provided in ORS 305.404 to 305.560.

17 (3) If, under subsection (1)(b)(D) of this section, the county assessor removes the forestland
18 designation upon the act of recording a subdivision plat, the land, or a part of the land, may be re-
19 qualified for forestland designation upon:

20 (a) Payment of all additional tax and applicable interest that remains due and owing on the land;

21 (b) Submission by the owner of an application for designation as forestland;

22 (c) Meeting all of the qualifications for designation as forestland; and

23 (d) Meeting the requirements, if any, of applicable local government zoning ordinances with re-
24 gard to minimum lot or parcel acreage for forest use.

25 **SECTION 10.** ORS 321.824 is amended to read:

26 321.824. (1) Lands assessed by the Department of Revenue pursuant to ORS 308.505 to 308.665
27 or 308.805 to 308.820 may not be assessed under ORS 321.805 to 321.855.

28 (2) Land used exclusively for growing cultured Christmas trees may not be assessed under ORS
29 321.805 to 321.855.

30 [(3) *Land that is used to grow hardwood timber, including but not limited to hybrid cottonwood,*
31 *may not be assessed under ORS 321.805 to 321.855 if:]*

32 [(a) *The land is prepared using intensive cultivation methods and is cleared of competing vegetation*
33 *for at least three years after tree planting;]*

34 [(b) *The timber is of a species marketable as fiber for inclusion in the furnish for manufacturing*
35 *paper products;]*

36 [(c) *The timber is harvested on a rotation cycle within 12 years after planting; and]*

37 [(d) *The land and timber are subject to intensive agricultural practices such as fertilization, insect*
38 *and disease control, cultivation and irrigation.]*

39 [(4)] (3) Nothing contained in ORS 321.805 to 321.855 *[shall prevent:]* **prevents:**

40 (a) The collection of ad valorem property taxes that became a lien against timber prior to July
41 1, 1962.

42 (b) The collection of taxes, charges or assessments made pursuant to law for protection.

43 (c) The collection of taxes levied under the provisions of ORS 321.005 to 321.185 and 321.560 to
44 321.600.

45 **SECTION 11.** ORS 321.842 is amended to read:

1 321.842. (1)(a) When land has once been designated as forestland as a result of an application
 2 being filed therefor it shall be valued as such until the county assessor removes the forestland des-
 3 ignation under paragraph (b) of this subsection.

4 (b) The county assessor shall remove the forestland designation upon:

5 (A) Notification by the taxpayer to the assessor to remove the designation;

6 (B) Sale or transfer to an ownership making it exempt from ad valorem property taxation;

7 (C) Discovery by the assessor that the land is no longer forestland; [or]

8 (D) The act of recording a subdivision plat under ORS chapter 92[.]; or

9 **(E) Qualification for farm use special assessment under ORS 308A.050 to 308A.128.**

10 (2) A taxpayer whose application filed under ORS 321.839 has been denied in whole or in part,
 11 or a taxpayer whose forestland has had the designation thereof removed in whole or in part, may
 12 appeal to the Oregon Tax Court within the time and in the manner provided in ORS 305.404 to
 13 305.560.

14 (3) If, under subsection (1)(b)(D) of this section, the county assessor removes the forestland
 15 designation upon the act of recording a subdivision plat, the land, or a part of the land, may be re-
 16 qualified for forestland designation upon:

17 (a) Payment of all additional tax and interest that remains due and owing with respect to the
 18 land;

19 (b) Submission by the owner of an application for designation as forestland as provided in this
 20 section;

21 (c) Meeting all of the qualifications for designation as forestland as provided in ORS 321.805 to
 22 321.855; and

23 (d) Meeting the requirements, if any, of applicable local government zoning ordinances with re-
 24 gard to minimum lot or parcel acreage for forest use.

25 **SECTION 12.** ORS 321.005 is amended to read:

26 321.005. As used in ORS 321.005 to 321.185, 321.560 to 321.600 and 477.440 to 477.460, unless the
 27 context requires otherwise:

28 (1) "Board" means the State Board of Forestry.

29 (2) "Protected forestlands" means those lands which are protected from the starting or spread
 30 of fire thereon or therefrom by:

31 (a) The State Forester, with the approval of the board;

32 (b) The United States of America through contract with the State Forester;

33 (c) Any forest protective agency under contract with the State Forester or the board pursuant
 34 to ORS 477.406; or

35 (d) Any forest protective agency, described in paragraph (c) of this subsection, under an agree-
 36 ment with the United States of America wherein such agency agrees to protect specific federal
 37 forestlands and, in return, the United States of America agrees to protect specific lands of such
 38 agency.

39 (3) "Department" means the Department of Revenue.

40 (4) "Committee" means the Emergency Fire Cost Committee.

41 (5) "Forestland" means any land producing forest products.

42 (6) "Forest products" means products from harvested timber, but does not include [*products from*
 43 *short rotation fiber grown under agricultural conditions as described in ORS 321.267 (3) or 321.824*
 44 *(3)*];

45 **(a) Products from land used to grow intensively managed hardwood timber, as defined in**

1 **ORS 308A.056, if the trees are harvested within 12 years after planting; or**

2 (b) Western juniper or products from harvested western juniper.

3 (7) "Harvest" means the point at which timber that has been cut, severed, or removed for pur-
4 poses of sale or use is first measured in the ordinary course of business as determined by reference
5 to common practice in the timber industry.

6 (8) "Merchantable stand of timber" means any stand on forestlands containing living or dead
7 timber which is being or can be harvested.

8 (9) "Taxpayer" means the owner of timber at time of harvest.

9 (10) "Taxes" means the taxes provided for in ORS 321.015.

10 (11) "Owner of timber" means any individual or combination of individuals, partnership, firm,
11 corporation or association of whatever nature holding title to harvested timber by virtue of:

12 (a) An instrument of conveyance;

13 (b) The harvesting of the timber; or

14 (c) The harvesting of the timber and payment therefor.

15 (12) "Timber" means all logs which can be measured in board feet and other forest products as
16 determined by department rule.

17 **SECTION 13.** ORS 215.203 is amended to read:

18 215.203. (1) Zoning ordinances may be adopted to zone designated areas of land within the
19 county as exclusive farm use zones. Land within such zones shall be used exclusively for farm use
20 except as otherwise provided in ORS 215.213, 215.283 or 215.284. Farm use zones shall be established
21 only when such zoning is consistent with the comprehensive plan.

22 (2)(a) As used in this section, "farm use" means the current employment of land for the primary
23 purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding,
24 breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or
25 honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural
26 use or animal husbandry or any combination thereof. "Farm use" includes the preparation, storage
27 and disposal by marketing or otherwise of the products or by-products raised on such land for hu-
28 man or animal use. "Farm use" also includes the current employment of land for the primary pur-
29 pose of obtaining a profit in money by stabling or training equines including but not limited to
30 providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propa-
31 gation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under
32 the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules
33 adopted by the commission. "Farm use" includes the on-site construction and maintenance of
34 equipment and facilities used for the activities described in this subsection. "Farm use" does not
35 include the use of land subject to the provisions of ORS chapter 321, except land used exclusively
36 for growing cultured Christmas trees as defined in subsection (3) of this section or land [*described*
37 *in ORS 321.267 (3) or 321.824 (3).*] **used for growing intensively managed hardwood timber, as**
38 **defined in ORS 308A.056.**

39 (b) "Current employment" of land for farm use includes:

40 (A) Farmland, the operation or use of which is subject to any farm-related government program;

41 (B) Land lying fallow for one year as a normal and regular requirement of good agricultural
42 husbandry;

43 (C) Land planted in orchards or other perennials, other than land specified in subparagraph (D)
44 of this paragraph, prior to maturity;

45 (D) Land not in an exclusive farm use zone which has not been eligible for assessment at special

1 farm use value in the year prior to planting the current crop and has been planted in orchards,
2 cultured Christmas trees or vineyards for at least three years;

3 (E) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically
4 tillable nor grazeable, lying in or adjacent to and in common ownership with a farm use land and
5 which is not currently being used for any economic farm use;

6 (F) Except for land under a single family dwelling, land under buildings supporting accepted
7 farm practices, including the processing facilities allowed by ORS 215.213 (1)(x) and 215.283 (1)(u)
8 and the processing of farm crops into biofuel as commercial activities in conjunction with farm use
9 under ORS 215.213 (2)(c) and 215.283 (2)(a);

10 (G) Water impoundments lying in or adjacent to and in common ownership with farm use land;

11 (H) Any land constituting a woodlot, not to exceed 20 acres, contiguous to and owned by the
12 owner of land specially valued for farm use even if the land constituting the woodlot is not utilized
13 in conjunction with farm use;

14 (I) Land lying idle for no more than one year where the absence of farming activity is due to
15 the illness of the farmer or member of the farmer’s immediate family. For purposes of this paragraph,
16 illness includes injury or infirmity whether or not such illness results in death;

17 (J) Any land [*described under ORS 321.267 (3) or 321.824 (3);*] **used for growing intensively**
18 **managed hardwood timber, as defined in ORS 308A.056;**

19 (K) Land used for the primary purpose of obtaining a profit in money by breeding, raising,
20 kenneling or training of greyhounds for racing; and

21 (L) Land used for the processing of farm crops into biofuel, as defined in ORS 315.141, if:

22 (i) Only the crops of the landowner are being processed;

23 (ii) The biofuel from all of the crops purchased for processing into biofuel is used on the farm
24 of the landowner; or

25 (iii) The landowner is custom processing crops into biofuel from other landowners in the area
26 for their use or sale.

27 (c) As used in this subsection, “accepted farming practice” means a mode of operation that is
28 common to farms of a similar nature, necessary for the operation of such farms to obtain a profit
29 in money, and customarily utilized in conjunction with farm use.

30 (3) “Cultured Christmas trees” means trees:

31 (a) Grown on lands used exclusively for that purpose, capable of preparation by intensive culti-
32 vation methods such as plowing or turning over the soil;

33 (b) Of a marketable species;

34 (c) Managed to produce trees meeting U.S. No. 2 or better standards for Christmas trees as
35 specified by the Agriculture Marketing Services of the United States Department of Agriculture; and

36 (d) Evidencing periodic maintenance practices of shearing for Douglas fir and pine species, weed
37 and brush control and one or more of the following practices: Basal pruning, fertilizing, insect and
38 disease control, stump culture, soil cultivation, irrigation.

39 **SECTION 14.** ORS 307.320 is amended to read:

40 307.320. The value of any deciduous trees, shrubs, plants or crops, whether annual or perennial,
41 and any cultured Christmas trees, as defined in ORS 215.203, or [*timber described under ORS 321.267*
42 *(3) or 321.824 (3);*] **intensively managed hardwood timber, as defined in ORS 308A.056**, growing
43 upon agricultural land devoted to agricultural purposes, shall be exempt from assessment and taxa-
44 tion and shall not be deemed real property under the provisions of ORS 307.010.

45 **SECTION 15.** ORS 315.104 is amended to read:

1 315.104. (1) A credit against the taxes otherwise due under ORS chapter 316 (or if the taxpayer
2 is a corporation, under ORS chapter 317 or 318) shall be allowed in an amount equal to 50 percent
3 of reforestation project costs actually paid or incurred to reforest underproductive Oregon
4 forestlands. Such costs include, but are not limited to, any fees established by the State Forester
5 under ORS 315.106 (4), site preparation, tree planting and other silviculture treatments considered
6 necessary by the State Forester to establish commercial, hardwood or softwood stands on appropri-
7 ate sites. Subject to subsection (5) of this section:

8 (a) One-half of the credit shall be taken in the tax year for which the State Forester, after
9 physical inspection of the forestland, issues a preliminary certificate under ORS 315.106 certifying
10 that the land qualifies as underproductive Oregon forestland and that the reforestation project
11 undertaken meets the requirements of this section and the specifications established by the State
12 Forester and the costs appear to be reasonable; and

13 (b) One-half of the credit shall be taken in the tax year for which the State Forester, after fur-
14 ther physical inspection of the land and project, certifies that the new forest is established in ac-
15 cordance with the specifications of the State Forester.

16 (2) No credit shall be allowed under either subsection (1)(a) or (b) of this section unless written
17 certification containing the following statements accompanies the claim for the credit or is other-
18 wise filed with the Department of Revenue:

19 (a) A preliminary certificate issued by the State Forester under ORS 315.106 that the land and
20 project meet the preliminary specifications established by the State Forester or that the new forest
21 is established, whichever is applicable at the time.

22 (b) A statement by the landowner or person in possession of the land that the land within the
23 project area will be used for the primary purpose of growing and harvesting trees of an acceptable
24 species.

25 (c) A statement that the landowner or person in possession of the land is aware that mainte-
26 nance practices, including release, may be needed to insure that a new forest is established and will
27 remain established.

28 (3) For purposes of this section, reforestation project costs shall not include:

29 (a) Costs paid or incurred to reforest any forestland that has been commercially logged to the
30 extent that reforestation is required under the Oregon Forest Practices Act, except costs paid or
31 incurred to reforest forestland following a hardwood harvest, conducted for the purposes of con-
32 verting underproductive forestlands, as determined by administrative rule.

33 (b) That portion of costs or expenses paid through a federal or state cost share, financial as-
34 sistance or other incentive program.

35 (c) Those costs paid or incurred to grow Christmas trees, ornamental trees, shrubs or plants,
36 or those costs paid or incurred to grow **intensively managed** hardwood timber, [*described under*
37 *ORS 321.267 (3) or 321.824 (3).*] **as defined in ORS 308A.056.**

38 (d) Any costs paid or incurred to purchase or otherwise acquire the land.

39 (e) The cost of purchase or other acquisition of tools and equipment with a useful life of more
40 than one year.

41 (4) To qualify for the credit:

42 (a) The project must be completed to specifications approved by the State Forester.

43 (b) The taxpayer's portion of the project costs must be \$500 or more.

44 (c) The taxpayer must be a private individual, corporation, group, Indian tribe or other native
45 group, association or other nonpublic legal entity owning, purchasing under recorded contract of

1 sale or leasing at least five acres of Oregon commercial forestland.

2 (d) Prior to December 31, 2022, the taxpayer must file with the State Forester a written request
3 for preliminary certification under ORS 315.106.

4 (5) Any tax credit otherwise allowable under this section which is not used by the taxpayer in
5 a particular year may be carried forward and offset against the taxpayer's tax liability for the next
6 succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried
7 forward and used in the second succeeding tax year, and likewise, any credit not used in that second
8 succeeding tax year may be carried forward and used in the third succeeding tax year, but may not
9 be carried forward for any tax year thereafter. In all cases the taxpayer must be the person who
10 made the investment into the project.

11 (6) The credit provided by this section shall be in addition to and not in lieu of any depreciation
12 or amortization deduction to which the taxpayer otherwise may be entitled with respect to the
13 reforestation project and the credit shall not affect the computation of basis for the property.

14 (7) In compliance with ORS chapter 183, the Department of Revenue and the State Forestry
15 Department may adopt rules consistent with law for carrying out the provisions of this section.

16 (8) As used in this section, "underproductive Oregon forestlands" means Oregon commercial
17 forestlands not meeting the minimum stocking standards of the Oregon Forest Practices Act.

18 (9) If, for any reason other than those specified in subsection (10) of this section, a new forest
19 is not established by the last day of the second taxable year following the taxable year for which
20 the preliminary certificate was issued, the State Forester shall so report to the Department of Re-
21 venue. The report filed under this subsection shall be the basis for the department to recover any
22 credit granted under subsection (1)(a) of this section. If, however, the new forest is not established
23 within the time required by this subsection on account of the reasons specified in subsection (10)
24 of this section, any credit allowed under subsections (1)(a) and (5) of this section shall not be re-
25 covered but no further credit as provided under subsections (1)(b) and (5) of this section shall be
26 allowed.

27 (10) Subject to requalification under this section in the manner applicable for the original claim,
28 including obtaining a new preliminary certificate, a taxpayer may claim an additional credit or
29 credits for reestablishing a new planting in the event that the new forest is destroyed by a natural
30 disaster or is not established for reasons beyond the control of the taxpayer, if the measures taken
31 in completing the original or earlier project would normally have resulted in establishing the mini-
32 mum number of trees per acre anticipated by the project.

33 (11) Any owner affected by a determination, regarding the reforestation tax credit made by:

34 (a) The State Forester, except for a denial of a request for a preliminary certificate due to the
35 annual reforestation credit cost limitation calculated under ORS 315.108, may appeal that determi-
36 nation in the manner provided for in ORS 526.475 (1).

37 (b) The Department of Revenue, may appeal that determination in the manner provided for in
38 ORS 526.475 (2).

39 **SECTION 16.** ORS 315.141 is amended to read:

40 315.141. (1) As used in this section:

41 (a) "Agricultural producer" means a person that produces biomass that is used in Oregon as
42 biofuel or to produce biofuel.

43 (b) "Biofuel" means liquid, gaseous or solid fuels derived from biomass.

44 (c) "Biomass" means organic matter that is available on a renewable or recurring basis and that
45 is derived from:

1 (A) Forest or rangeland woody debris from harvesting or thinning conducted to improve forest
2 or rangeland ecological health and reduce uncharacteristic stand replacing wildfire risk;

3 (B) Wood material from **intensively managed** hardwood timber [*described in ORS 321.267 (3)*];
4 **as defined in ORS 308A.056**;

5 (C) Agricultural residues;

6 (D) Offal and tallow from animal rendering;

7 (E) Food wastes collected as provided under ORS chapter 459 or 459A;

8 (F) Yard or wood debris collected as provided under ORS chapter 459 or 459A;

9 (G) Wastewater solids; or

10 (H) Crops grown solely to be used for energy.

11 (d) "Biomass" does not mean wood that has been treated with creosote, pentachlorophenol, in-
12 organic arsenic or other inorganic chemical compounds.

13 (e) "Biomass collector" means a person that collects biomass to be used in Oregon as biofuel
14 or to produce biofuel.

15 (2)(a) An agricultural producer or biomass collector shall be allowed a credit against the taxes
16 that would otherwise be due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS
17 chapter 317 or 318 for:

18 (A) The production of biomass that is used in Oregon as biofuel or to produce biofuel; or

19 (B) The collection of biomass that is used in Oregon as biofuel or to produce biofuel.

20 (b) A credit under this section may be claimed in the tax year in which the agricultural pro-
21 ducer or biomass collector transfers biomass to a biofuel producer.

22 (c) Notwithstanding paragraph (a) of this subsection, a tax credit is not allowed for grain corn,
23 but a tax credit shall be allowed for other corn material.

24 (3) The amount of the credit shall be calculated as follows:

25 (a) Determine the quantity of biomass transferred to a biofuel producer during the tax year;

26 (b) Categorize the biomass into appropriate categories; and

27 (c) Multiply the quantity of biomass in a particular category by the appropriate credit rate for
28 that category, expressed in dollars and cents, that is prescribed in ORS 469.790.

29 (4) The amount of the credit claimed under this section for any tax year may not exceed the tax
30 liability of the taxpayer.

31 (5)(a) A biofuel producer shall provide a written receipt to an agricultural producer or biomass
32 collector at the time biomass is transferred from the agricultural producer or biomass collector to
33 the biofuel producer. The receipt must state the quantity and type of biomass being transferred and
34 that the biomass is to be used to produce biofuel.

35 (b) Each agricultural producer or biomass collector shall maintain the receipts described in this
36 subsection in their records for a period of at least five years after the tax year in which the credit
37 is claimed or for a longer period of time prescribed by the Department of Revenue.

38 (6) The credit shall be claimed on a form prescribed by the Department of Revenue that contains
39 the information required by the department.

40 (7) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a
41 particular tax year may be carried forward and offset against the taxpayer's tax liability for the next
42 succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried
43 forward and used in the second succeeding tax year, and likewise any credit not used in that second
44 succeeding tax year may be carried forward and used in the third succeeding tax year, and any
45 credit not used in that third succeeding tax year may be carried forward and used in the fourth

1 succeeding tax year, but may not be carried forward for any tax year thereafter.

2 (8) In the case of a credit allowed under this section:

3 (a) A nonresident shall be allowed the credit under this section in the proportion provided in
4 ORS 316.117.

5 (b) If a change in the status of the taxpayer from resident to nonresident or from nonresident
6 to resident occurs, the credit allowed by this section shall be determined in a manner consistent
7 with ORS 316.117.

8 (c) If a change in the taxable year of the taxpayer occurs as described in ORS 314.085, or if the
9 department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed under this
10 section shall be prorated or computed in a manner consistent with ORS 314.085.

11 **SECTION 17.** ORS 316.045 is amended to read:

12 316.045. (1) As used in this section:

13 (a) "Farming" means:

14 (A) Raising, harvesting and selling crops;

15 (B) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or honeybees
16 or the produce thereof;

17 (C) Dairying and selling dairy products;

18 (D) Stabling or training equines, including but not limited to providing riding lessons, training
19 clinics and schooling shows;

20 (E) Propagating, cultivating, maintaining or harvesting aquatic species and bird and animal
21 species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission;

22 (F) On-site constructing and maintaining equipment and facilities used for the activities de-
23 scribed in this subsection;

24 (G) Preparing, storing or disposing of, by marketing or otherwise, the products or by-products
25 raised for human or animal use on land employed in activities described in this subsection; or

26 (H) Any other agricultural or horticultural activity or animal husbandry, or any combination
27 of these activities, except that "farming" does not include growing and harvesting trees of a
28 marketable species other than growing and harvesting cultured Christmas trees or [*certain hardwood*
29 *timber described in ORS 321.267 (3) or 321.824 (3).*] **intensively managed hardwood timber, as**
30 **defined in ORS 308A.056.**

31 (b) "Section 1231 gain" has the meaning given that term in section 1231 of the Internal Revenue
32 Code.

33 (2) Notwithstanding ORS 316.037, taxable income that consists of net long-term capital gain shall
34 be subject to tax under this chapter at a rate of five percent if all of the following conditions apply:

35 (a) The gain is:

36 (A) Derived from the sale or exchange of capital assets consisting of ownership interests in a
37 corporation, partnership or other entity in which, prior to the sale or exchange, the taxpayer owned
38 at least a 10 percent ownership interest; or

39 (B) Section 1231 gain.

40 (b) The property that was sold or exchanged consisted of:

41 (A) Ownership interests in a corporation, partnership or other entity that is engaged in the
42 trade or business of farming; or

43 (B) Property that is predominantly used in the trade or business of farming.

44 (c) The sale or exchange is to a person who is not related to the taxpayer under section 267 of
45 the Internal Revenue Code.

1 (d) The sale or exchange constitutes a substantially complete termination of all of the taxpayer's
 2 ownership interests in a trade or business that is engaged in farming or a substantially complete
 3 termination of all of the taxpayer's ownership interests in property that is employed in the trade
 4 or business of farming. Ownership of a farm dwelling or farm homesite does not constitute owner-
 5 ship of property employed in the trade or business of farming.

6 (3) If the taxpayer has net long-term capital gain derived in part from the sale or exchange of
 7 property described in subsection (2)(b) of this section and in part from the sale or exchange of all
 8 other property, the net long-term capital gain that is subject to tax under this section shall be de-
 9 termined as follows:

10 (a) Compute the net long-term capital gain derived from all property described in subsection
 11 (2)(b) of this section that was sold or exchanged during the tax year.

12 (b) Compute the net capital gain or loss from the sale or exchange of all other property during
 13 the tax year.

14 (c) If the amount determined under paragraph (b) of this subsection is a net capital gain, the
 15 gain that is subject to tax under subsection (2) of this section shall be the amount determined under
 16 paragraph (a) of this subsection.

17 (d) If the amount determined under paragraph (b) of this subsection is a net capital loss, the gain
 18 that is subject to tax under subsection (2) of this section shall be the amount determined under
 19 paragraph (a) of this subsection minus the amount determined under paragraph (b) of this subsection.

20 **SECTION 18.** ORS 317.063 is amended to read:

21 317.063. (1) As used in this section:

22 (a) "Farming" means:

23 (A) Raising, harvesting and selling crops;

24 (B) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or honeybees
 25 or the produce thereof;

26 (C) Dairying and selling dairy products;

27 (D) Stabling or training equines, including but not limited to providing riding lessons, training
 28 clinics and schooling shows;

29 (E) Propagating, cultivating, maintaining or harvesting aquatic species and bird and animal
 30 species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission;

31 (F) On-site constructing and maintaining equipment and facilities used for the activities de-
 32 scribed in this subsection;

33 (G) Preparing, storing or disposing of, by marketing or otherwise, the products or by-products
 34 raised for human or animal use on land employed in activities described in this subsection; or

35 (H) Any other agricultural or horticultural activity or animal husbandry, or any combination
 36 of these activities, except that "farming" does not include growing and harvesting trees of a
 37 marketable species other than growing and harvesting cultured Christmas trees or [*certain hardwood*
 38 *timber described in ORS 321.267 (3) or 321.824 (3).*] **intensively managed hardwood timber, as**
 39 **defined in ORS 308A.056.**

40 (b) "Section 1231 gain" has the meaning given that term in section 1231 of the Internal Revenue
 41 Code.

42 (2) Notwithstanding ORS 317.061, taxable income that consists of net long-term capital gain shall
 43 be subject to tax under this chapter at a rate of five percent if all of the following conditions apply:

44 (a) The gain is:

45 (A) Derived from the sale or exchange of capital assets consisting of ownership interests in a

1 corporation, partnership or other entity in which, prior to the sale or exchange, the taxpayer owned
 2 at least a 10 percent ownership interest; or

3 (B) Section 1231 gain.

4 (b) The property that was sold or exchanged consisted of:

5 (A) Ownership interests in a corporation, partnership or other entity that is engaged in the
 6 trade or business of farming; or

7 (B) Property that is predominantly used in the trade or business of farming.

8 (c) The sale or exchange is to a person who is not related to the taxpayer under section 267 of
 9 the Internal Revenue Code.

10 (d) The sale or exchange constitutes a substantially complete termination of all of the taxpayer's
 11 ownership interests in a trade or business that is engaged in farming or a substantially complete
 12 termination of all of the taxpayer's ownership interests in property that is employed in the trade
 13 or business of farming.

14 (3) If the taxpayer has net long-term capital gain derived in part from the sale or exchange of
 15 property described in subsection (2)(b) of this section and in part from the sale or exchange of all
 16 other property, the net long-term capital gain that is subject to tax under this section shall be de-
 17 termined as follows:

18 (a) Compute the net long-term capital gain derived from all property described in subsection
 19 (2)(b) of this section that was sold or exchanged during the tax year.

20 (b) Compute the net capital gain or loss from the sale or exchange of all other property during
 21 the tax year.

22 (c) If the amount determined under paragraph (b) of this subsection is a net capital gain, the
 23 gain that is subject to tax under subsection (2) of this section shall be the amount determined under
 24 paragraph (a) of this subsection.

25 (d) If the amount determined under paragraph (b) of this subsection is a net capital loss, the gain
 26 that is subject to tax under subsection (2) of this section shall be the amount determined under
 27 paragraph (a) of this subsection minus the amount determined under paragraph (b) of this subsection.

28 **SECTION 19.** ORS 469A.025 is amended to read:

29 469A.025. (1) Electricity generated utilizing the following types of energy may be used to comply
 30 with a renewable portfolio standard:

31 (a) Wind energy.

32 (b) Solar photovoltaic and solar thermal energy.

33 (c) Wave, tidal and ocean thermal energy.

34 (d) Geothermal energy.

35 (2) Except as provided in subsection (3) of this section, electricity generated from biomass and
 36 biomass by-products may be used to comply with a renewable portfolio standard, including but not
 37 limited to electricity generated from:

38 (a) Organic human or animal waste;

39 (b) Spent pulping liquor;

40 (c) Forest or rangeland woody debris from harvesting or thinning conducted to improve forest
 41 or rangeland ecological health and to reduce uncharacteristic stand replacing wildfire risk;

42 (d) Wood material from **intensively managed** hardwood timber, [*grown on land described in*
 43 *ORS 321.267 (3);*] **as defined in ORS 308A.056;**

44 (e) Agricultural residues;

45 (f) Dedicated energy crops; and

1 (g) Landfill gas or biogas produced from organic matter, wastewater, anaerobic digesters or
 2 municipal solid waste.

3 (3) Electricity generated from the direct combustion of biomass may not be used to comply with
 4 a renewable portfolio standard if any of the biomass combusted to generate the electricity includes:

5 (a) Municipal solid waste; or

6 (b) Wood that has been treated with chemical preservatives such as creosote, pentachlorophenol
 7 or chromated copper arsenate.

8 (4) Electricity generated by a hydroelectric facility may be used to comply with a renewable
 9 portfolio standard only if:

10 (a) The facility is located outside any protected area designated by the Pacific Northwest Elec-
 11 tric Power and Conservation Planning Council as of July 23, 1999, or any area protected under the
 12 federal Wild and Scenic Rivers Act, Public Law 90-542, or the Oregon Scenic Waterways Act, ORS
 13 390.805 to 390.925; or

14 (b) The electricity is attributable to efficiency upgrades made to the facility on or after January
 15 1, 1995.

16 (5) Up to 50 average megawatts of electricity per year generated by an electric utility from
 17 certified low-impact hydroelectric facilities described in ORS 469A.020 (4) may be used to comply
 18 with a renewable portfolio standard, without regard to the number of certified facilities operated
 19 by the electric utility or the generating capacity of those facilities. A hydroelectric facility described
 20 in this subsection is not subject to the requirements of subsection (4) of this section.

21 (6) Electricity generated from hydrogen gas derived from any source of energy described in
 22 subsections (1) to (5) of this section may be used to comply with a renewable portfolio standard.

23 (7) If electricity generation employs multiple energy sources, that portion of the electricity
 24 generated that is attributable to energy sources described in subsections (1) to (6) of this section
 25 may be used to comply with a renewable portfolio standard.

26 (8) The State Department of Energy by rule may approve energy sources other than those de-
 27 scribed in this section that may be used to comply with a renewable portfolio standard. The de-
 28 partment may not approve petroleum, natural gas, coal or nuclear fission as an energy source that
 29 may be used to comply with a renewable portfolio standard.

30 **SECTION 20. ORS 321.390 and 321.855 are repealed.**

31 **SECTION 21. The amendments to ORS 215.203, 307.320, 308A.056, 308A.062, 308A.068,**
 32 **308A.071, 308A.077, 308A.113, 308A.116, 315.104, 315.141, 316.045, 317.063, 321.005, 321.267,**
 33 **321.359, 321.824, 321.842 and 469A.025 by sections 1 to 19 of this 2009 Act and the repeal of**
 34 **ORS 321.390 and 321.855 by section 20 of this 2009 Act apply to property tax years beginning**
 35 **on or after July 1, 2010.**