

# Enrolled House Bill 2904

Sponsored by Representative KOTEK; Senators JOHNSON, SCHRADER (at the request of Fazio Farms)

CHAPTER .....

AN ACT

Relating to property taxation; creating new provisions; amending ORS 307.394, 307.397, 308A.053, 308A.056, 308A.113, 308A.116, 308A.703, 308A.706 and 308A.718; and prescribing an effective date.

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

**SECTION 1.** ORS 308A.053 is amended to read:

308A.053. As used in ORS 308A.050 to 308A.128:

(1) "Exclusive farm use zone" means a zoning district established by a county or a city under the authority granted by ORS chapter 215 or 227 that is consistent with the farm use zone provisions set forth in ORS 215.203 to 215.311, 215.438, 215.448, 215.452, 215.455 or 215.700 to 215.780.

(2) "Exclusive farm use zone farmland" means land that qualifies for special assessment under ORS 308A.062.

(3) "Homesite" means the land, including all tangible improvements to the land under and adjacent to a dwelling and other structures, if any, that are customarily provided in conjunction with a dwelling.

(4) "Nonexclusive farm use zone farmland" means land that is not within an exclusive farm use zone but that qualifies for farm use special assessment under ORS 308A.068.

**(5) "Remediation plan" means a plan certified by an extension agent of the Oregon State University Extension Service to remediate or mitigate severe adverse conditions on farmland.**

**(6) "Severe adverse conditions on farmland" means conditions that render impracticable continued farm use and that are not due to an intentional or negligent act or omission by the owner, tenant or lessee of the farmland or the applicant for certification of a remediation plan.**

**SECTION 2.** ORS 308A.056 is amended to read:

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

(a) Raising, harvesting and selling crops[;].

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

(c) Dairying and selling dairy products[;].

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

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

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

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

**(h) Implementing a remediation plan previously presented to the assessor for the county in which the land that is the subject of the plan is located.**

*[(h)]* (i) Using land described in this section for any other agricultural or horticultural use or animal husbandry or any combination thereof.

(2) "Farm use" does not include the use of land subject to timber and forestland taxation under ORS chapter 321, except land used exclusively for growing cultured Christmas trees or land described in ORS 321.267 (3) or 321.824 (3) (relating to land used to grow certain hardwood timber, including hybrid cottonwood).

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

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

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

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

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

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

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

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

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

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

(j) Land described under ORS 321.267 (3) or 321.824 (3) (relating to land used to grow certain hardwood timber, including hybrid cottonwood);

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

**(L) Land subject to a remediation plan previously presented to the assessor for the county in which the land that is the subject of the plan is located; or**

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

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

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

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

(4) As used in this section:

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

(b) "Cultured Christmas trees" means trees:

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

(B) Of a marketable species;

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

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

(i) Basal pruning;

(ii) Fertilizing;

(iii) Insect and disease control;

(iv) Stump culture;

(v) Soil cultivation; or

(vi) Irrigation.

**SECTION 3.** ORS 308A.113 is amended to read:

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

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

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

(c) Establishing a nonfarm dwelling on the land under ORS 215.236.

(2) Notwithstanding subsection (1)(a) of this section, 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.

**(3)(a) Disqualification under subsection (1)(a) of this section is reversed if the taxpayer:**

**(A) Notifies the assessor in writing pursuant to ORS 308A.718 of the taxpayer's intention to seek certification for a remediation plan; and**

**(B) Presents a certified remediation plan to the assessor within one year after the date of disqualification.**

**(b) In addition to the grounds for disqualification under subsection (1)(a) of this section, the assessor may disqualify land granted farm use special assessment pursuant to a remediation plan upon:**

**(A) Discovery, or notice from an extension agent of the Oregon State University Extension Service, that the plan is not being implemented substantially as certified; or**

**(B) Discovery, or notice from the owner, tenant or lessee or from an extension agent of the Oregon State University Extension Service, that the plan as certified is no longer necessary, practicable or effective.**

[(3)(a)] **(4)(a)** Notwithstanding ORS 308.210, 308A.062, 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.

[(4)] **(5)** Upon disqualification, additional taxes shall be determined as provided in ORS 308A.700 to 308A.733.

**SECTION 4.** ORS 308A.116 is amended to read:

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

(a) Notification by the taxpayer to the assessor to remove the special assessment;  
(b) Sale or transfer to an ownership making it exempt from ad valorem property taxation;  
(c) Removal of the special assessment by the assessor upon the discovery that the land is no longer in farm use for failure to meet the income requirements under ORS 308A.071 or is no longer in farm use; or

(d) The act of recording a subdivision plat under the provisions of ORS chapter 92.

(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) Disqualification under subsection (1)(c) of this section is reversed if the taxpayer:**

**(A) Notifies the assessor in writing pursuant to ORS 308A.718 of the taxpayer's intention to seek certification for a remediation plan; and**

**(B) Files an application for a certified remediation plan with the assessor within one year after the date of disqualification.**

**(b) In addition to the grounds for disqualification under subsection (1)(c) of this section, the assessor may disqualify land granted farm use special assessment pursuant to a remediation plan upon:**

**(A) Discovery, or notice from an extension agent of the Oregon State University Extension Service, that the plan is not being implemented substantially as certified; or**

**(B) Discovery, or notice from the owner, tenant or lessee or from an extension agent of the Oregon State University Extension Service, that the plan as certified is no longer necessary, practicable or effective.**

~~[(6)(a)]~~ **(7)(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)]~~ **(8)** Upon disqualification, additional taxes shall be determined as provided in ORS 308A.700 to 308A.733.

**SECTION 5.** ORS 308A.703 is amended to read:

308A.703. (1) This section applies to land upon the land's disqualification from special assessment under any of the following sections:

- (a) Exclusive farm use zone farmland under ORS 308A.113;
- (b) Nonexclusive farm use zone farmland under ORS 308A.116;
- (c) Western Oregon designated forestland under ORS 321.359;
- (d) Eastern Oregon designated forestland under ORS 321.842;
- (e) Wildlife habitat special assessment under ORS 308A.430; or
- (f) Conservation easement special assessment under ORS 308A.465.

(2) Following a disqualification listed in subsection (1) of this section, an additional tax shall be added to the tax extended against the land on the next assessment and tax roll, to be collected and distributed in the same manner as other ad valorem property tax moneys. The additional tax shall be equal to the difference between the taxes assessed against the land and the taxes that would otherwise have been assessed against the land, for each of the number of years determined under subsection (3) of this section.

(3) The number of years for which additional taxes shall be calculated shall equal the lesser of the number of consecutive years the land had qualified for the special assessment program for which disqualification has occurred or:

(a) Ten years, in the case of exclusive farm use zone farmland, but only if the land, immediately following disqualification, remains outside an urban growth boundary;

(b) Ten years, in the case of wildlife habitat special assessment land within an exclusive farm use zone, but only if the land, immediately following disqualification, remains outside an urban growth boundary;

(c) Ten years, in the case of conservation easement special assessment land within an exclusive farm use zone, but only if the land, immediately following disqualification, remains outside an urban growth boundary; or

(d) Five years, in the case of:

(A) Nonexclusive farm use zone farmland;

(B) Western Oregon designated forestland;

(C) Eastern Oregon designated forestland;

(D) Exclusive farm use zone farmland that is not described in paragraph (a) of this subsection;

(E) Wildlife habitat special assessment land that is not described in paragraph (b) of this subsection; or

(F) Conservation easement special assessment land that is not described in paragraph (c) of this subsection.

**(4)(a) Except as provided in paragraph (b) of this subsection, if disqualification under subsection (1)(a) or (b) of this section occurs within five years after the end of a period of farm use special assessment pursuant to a remediation plan as defined in ORS 308A.053, the number of years for which the additional tax shall be calculated shall be the number of years determined under subsection (3) of this section plus the number of years during which farm use special assessment was granted pursuant to the remediation plan.**

**(b) Additional tax may not be collected for the number of years during which farm use special assessment was granted pursuant to the remediation plan if the plan:**

**(A) Is implemented in good faith; and**

**(B) Fails to render continued farm use practicable.**

[4] (5) The additional taxes described in this section shall be deemed assessed and imposed in the year to which the additional taxes relate.

[5] (6) If the disqualification of the land is the result of the sale or transfer of the land to an ownership making the land exempt from ad valorem property taxation, the lien for additional taxes shall attach as of the day preceding the sale or transfer.

[6] (7) The amount determined to be due under this section may be paid to the tax collector prior to the time of the next general property tax roll, pursuant to the provisions of ORS 311.370.

**SECTION 6.** ORS 308A.706 is amended to read:

308A.706. (1) Notwithstanding that land [*may have been*] **is** disqualified from special assessment, the additional taxes described under ORS 308A.703 [*shall*] **may** not be imposed and shall remain a

potential tax liability if, as of the date the disqualification is taken into account on the assessment and tax roll, the land is any of the following:

- (a) Disqualified exclusive farm use zone farmland or nonexclusive farm use zone farmland that:
  - (A) Is not being used as farmland; and
  - (B) Is not being used for industrial, commercial, residential or other use that is incompatible with a purpose to return the land to farm use.
- (b) Acquired by a governmental agency or body as a result of an exchange of the land for land of approximately equal value held by the governmental agency or body.
- (c) Acquired and used for natural heritage purposes and all of the following additional requirements are met:
  - (A) The land is registered under ORS 273.581 as a natural heritage conservation area;
  - (B) The land is acquired by a private nonprofit corporation;
  - (C) The land is retained by the corporation, or transferred to the state by the corporation, for the purpose of educational, scientific and passive recreational use consistent with conservation of the ecological values and natural heritage elements of the area;
  - (D) If the land is retained by the corporation, it remains open to the public without charge for the uses described in subparagraph (C) of this paragraph; and
  - (E) The land is managed pursuant to a voluntary management agreement under ORS 273.581 (5).
- (d) Qualified for special assessment under:
  - (A) ORS 308A.062, relating to farm use special assessment of land in an exclusive farm use zone;
  - (B) ORS 308A.068, relating to farm use special assessment of nonexclusive farm use zone farmland;
  - (C) ORS 321.358, relating to classification as designated forestland in western Oregon;
  - (D) ORS 321.839, relating to classification as designated forestland in eastern Oregon;
  - (E) ORS 321.709, relating to qualification as small tract forestland;
  - (F) ORS 308A.424, relating to wildlife habitat special assessment; or
  - (G) ORS 308A.456, relating to conservation easement special assessment.
- (e) Disqualified nonexclusive farm use zone farmland, to the extent the additional taxes are deferred or abated as provided in ORS 308A.119.

**(2) This section does not apply to the additional taxes imposed under ORS 308A.703 (4)(a) for the number of years during which farm use special assessment was granted pursuant to a remediation plan as defined in ORS 308A.053.**

[2] (3) In any case where the additional tax is deferred under the provisions of this section but may subsequently be imposed under ORS 308A.712, the county assessor shall continue to enter the notation "potential additional tax liability" on the assessment and tax roll.

**SECTION 7.** ORS 308A.718 is amended to read:

308A.718. (1) The county assessor shall send notice as provided in this section if land is disqualified under any of the following special assessment programs:

- (a) Farm use special assessment under ORS 308A.050 to 308A.128.
- (b) Farm or forest homesite special assessment under ORS 308A.250 to 308A.259.
- (c) Western Oregon designated forestland special assessment under ORS 321.257 to 321.390.
- (d) Eastern Oregon designated forestland special assessment under ORS 321.805 to 321.855.
- (e) Small tract forestland special assessment under ORS 321.700 to 321.754.
- (f) Wildlife habitat special assessment under ORS 308A.403 to 308A.430.
- (g) Conservation easement special assessment under ORS 308A.450 to 308A.465.

(2) Notwithstanding that a change in use described in this section is not a disqualification, the assessor shall send notice as provided in this section when the highest and best use of land changes from forestland to a different highest and best use.

(3) Within 30 days after the date that land is disqualified from special assessment, the assessor shall notify the taxpayer in writing of the disqualification and shall state the reason for the disqualification.

(4) Following receipt of the notification, the taxpayer may appeal the assessor's determination to the Oregon Tax Court within the time and in the manner provided in ORS 305.404 to 305.560.

(5)(a) When any land has been granted special assessment under any of the special assessment laws listed in subsection (1) of this section and the land is disqualified from such special assessment, the county assessor shall furnish the owner with a written explanation summarizing:

(A) ORS 308A.706 (1)(d) (relating to change in special assessment);

(B) ORS 308A.727 (relating to change in use to open space use special assessment for certain golf courses);

(C) The administrative act necessary under ORS 308A.724 to change the property to another classification described in this paragraph; and

(D) The imposition of any penalties that would result from the disqualification if no requalification or reclassification is made under one of the other special assessment laws listed in this paragraph.

(b) The written explanation required by this subsection shall be given in conjunction either with the notice of disqualification required under this section or with an order or notice of disqualification otherwise provided by law.

(c)(A) If no notice of disqualification is required to be made by this section or other provision of law, the written explanation required by this subsection shall be made by the county assessor.

(B) A written explanation made under this paragraph shall be made by the assessor within 30 days of the effective date of the disqualification.

(6) Subsections (1) to (5) of this section do not apply if the reason for the disqualification is:

(a) The result of a request for disqualification by the property owner; or

(b) Because the property is being acquired by a government or tax-exempt entity.

**(7) Within 30 days after the date the notification required under subsection (3) of this section is mailed, a taxpayer intending to implement a remediation plan as defined in ORS 308A.053 on the disqualified land that is the subject of the notification must notify the assessor in writing of the taxpayer's intention to seek certification for the remediation plan.**

**SECTION 8.** ORS 307.394 is amended to read:

307.394. (1) The following tangible personal property is exempt from ad valorem property taxation:

(a) Farm machinery and equipment used primarily in the preparation of land, planting, raising, cultivating, irrigating, harvesting or placing in storage of farm crops;

(b) Farm machinery and equipment used primarily for the purpose of feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or bees or for dairying and the sale of dairy products; *[or]*

**(c) Machinery and equipment used primarily to implement a remediation plan as defined in ORS 308A.053 for the period of time for which the remediation plan is certified; or**

*[(c)]* **(d)** Farm machinery and equipment used primarily in any other agricultural or horticultural use or animal husbandry or any combination of these activities.

(2)(a) Items of tangible personal property, including but not limited to tools, machinery and equipment that are used predominantly in the construction, reconstruction, maintenance, repair, support or operation of farm machinery, and equipment and other real or personal farm improvements that are used primarily in animal husbandry, agricultural or horticultural activities, or any combination of these activities, are exempt from ad valorem property taxation.

(b) An item of tangible personal property described in paragraph (a) of this subsection is exempt from ad valorem property taxation only if the person that owns, possesses or controls the item also:

(A) Owns, possesses or controls the farm machinery, equipment and other real and personal farm improvements for which the item is used; and

(B) Carries on the animal husbandry, agricultural or horticultural activity, or combination of activities, in which the farm machinery, equipment or other real and personal farm improvements are used.

**SECTION 9.** (1) The Director of the Department of Revenue shall adopt rules necessary for administration of farm use special assessment pursuant to a remediation plan under ORS 308A.056.

(2) The Director of the Oregon State University Extension Service may establish by rule a fee, payable by persons seeking to implement remediation plans, in an amount necessary to reimburse the Oregon State University Extension Service for the costs of certifying the plans.

(3) Only the portions of farmland on which the remediation plan is actually implemented qualify for farm use special assessment under ORS 308A.062 and 308A.068 pursuant to a remediation plan under ORS 308A.056.

**SECTION 10.** (1) Farm use special assessment pursuant to a remediation plan as defined in ORS 308A.053 may be granted for tax years beginning on or after July 1, 2007.

(2)(a) For tax years beginning before July 1, 2010:

(A) Application for farm use special assessment pursuant to a remediation plan as defined in ORS 308A.053 must be filed in writing with the county assessor within 180 days after the effective date of this 2009 Act.

(B) A copy of the remediation plan must be submitted to the assessor within 270 days after the effective date of this 2009 Act.

(C) The remediation plan will be presumed to be certified unless the plan is shown to be substantially impracticable, ineffective or fraudulent.

(b) Refund of property taxes under this subsection shall be made under ORS 311.806 notwithstanding the time limitations in ORS 311.806 and shall be paid without interest.

**SECTION 11.** ORS 307.397 is amended to read:

307.397. (1) The following items of real property machinery and equipment or tangible personal property are exempt from ad valorem property taxation:

[(1)] (a) Frost control systems used in agricultural or horticultural activities carried on by the farmer;

[(2)] (b) Trellises used for hops, beans or fruit or for other agricultural or horticultural purposes;

[(3)] (c) Hop harvesting equipment, including but not limited to hop pickers;

[(4)] (d) Oyster racks, trays, stakes and other in-water structures used to raise bivalve mollusks;

or

[(5)] (e) Equipment used for the fresh shell egg industry that is directly related and reasonably necessary to produce, prepare, package and ship fresh shell eggs from the place of origin to market, whether bolted to the floor, wired or plumbed to interconnected equipment, including but not limited to grain bins, conveyors for transporting grain, grain grinding machinery, feed storage hoppers, cages, egg collection conveyors and equipment for washing, drying, candling, grading, packaging and shipping fresh shell eggs.

(2) A real property building, structure or improvement is exempt from ad valorem property taxation if it:

(a) Is used primarily to grow plants for agricultural or horticultural production;

(b) Is covered with polyethylene, fiberglass, corrugated polycarbonate acrylic or any other transparent or translucent material designed primarily to allow passage of solar heat and light; and

(c) Does not have a permanent heat source other than radiant heating provided by direct sunlight.

**SECTION 12.** This 2009 Act takes effect on the 91st day after the date on which the regular session of the Seventy-fifth Legislative Assembly adjourns sine die.



**Passed by House June 10, 2009**

**Repassed by House June 25, 2009**

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Chief Clerk of House

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Speaker of House

**Passed by Senate June 24, 2009**

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President of Senate

**Received by Governor:**

.....M,....., 2009

**Approved:**

.....M,....., 2009

.....  
Governor

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

.....M,....., 2009

.....  
Secretary of State