

Senate Bill 455

Sponsored by Senator JOHNSON (at the request of PUC Right-of-Way Committee) (Pre-session filed.)

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**.

Exempts Department of Transportation from need to obtain local permit before removing trees.

Permits department to inspect and condemn trees that potentially pose immediate and substantial risk of damage or injury by obstructing, hanging over or otherwise encroaching or threatening to encroach in any manner on state highway.

Increases amount of minimum appraised value of forest products required to place forest products for sale at public auction by department.

A BILL FOR AN ACT

Relating to trees; creating new provisions; and amending ORS 366.365, 366.395 and 527.745.

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

SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS chapter 366.

SECTION 2. Notwithstanding any city, county or other local government charter or ordinance, the Department of Transportation may cut down or remove trees located within a state highway right of way without first obtaining a permit.

SECTION 3. ORS 366.365 is amended to read:

366.365. (1) The Department of Transportation may go upon private property in the manner provided by ORS 35.220 to determine the advisability or practicability of locating and constructing a highway over the property or the source, suitability or availability of road-building materials thereon.

(2)(a) The department may go upon private property in the manner provided by ORS 35.220 to inspect a tree that the department believes may potentially pose an immediate and substantial risk of damage or injury because the tree is obstructing, hanging over or otherwise encroaching or threatening to encroach in any manner on a state highway.

(b) If after inspecting the tree the department believes that the tree presents a potential risk as described in paragraph (a) of this subsection, the department may request that an arborist certified by the International Society of Arboriculture conduct a technical evaluation, as defined by the department by rule, of the tree.

(c) If the arborist determines after conducting a technical evaluation that the tree presents an immediate and substantial risk of damage or injury, the department may immediately cut down the tree.

[(2)] (3) The department may go upon private property to cut down or remove trees located on the property without notifying the property owner if the department has determined that the trees create an immediate and substantial risk of damage or injury by obstructing, hanging over or otherwise encroaching or threatening to encroach in any manner on a state highway.

[(3)] (4) Within a reasonable amount of time after the department cuts down or removes trees in the manner provided by subsection (2) or (3) of this section, the department shall locate the

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 property owner and notify the property owner of the department's actions. The department may es-
 2 tablish the process of notification by rule.

3 **SECTION 4.** ORS 366.395 is amended to read:

4 366.395. (1) The Department of Transportation may sell, lease, exchange or otherwise dispose
 5 or permit use of real or personal property, including equipment and materials acquired by the de-
 6 partment, title to which real or other property may have been taken either in the name of the de-
 7 partment, or in the name of the state, and which real or personal property is, in the opinion of the
 8 department, no longer needed, required or useful for department purposes, except that real property
 9 may be leased when, in the opinion of the department, such real property will not be needed, re-
 10 quired or useful for department purposes during the leasing period. The department may exchange
 11 property as provided in subsection (3) of this section regardless of whether the property is needed
 12 by, required by or useful to the department if, in the judgment of the department, doing so will best
 13 serve the interests of the state.

14 (2) The department may sell, lease, exchange or otherwise dispose of such real or personal
 15 property in such manner as, in the judgment of the department, will best serve the interests of the
 16 state and will most adequately conserve highway funds or the department's account or fund for the
 17 real or personal property. In the case of real property, interest in or title to the same may be con-
 18 veyed by deed or other instrument executed in the name of the state, by and through the depart-
 19 ment. All funds or money derived from the sale or lease of any such property shall be paid by the
 20 department to the State Treasurer with instructions to the State Treasurer to credit such funds or
 21 moneys:

22 (a) To the highway fund; or

23 (b) To the department's account or fund for the property. The State Treasurer shall credit the
 24 funds and moneys so received as the department shall direct.

25 (3) Property described in subsection (1) of this section may be exchanged for other property or
 26 for services. As used in this subsection, "services" includes, but is not limited to, public improve-
 27 ments as defined in ORS 279A.010.

28 (4)(a) Before offering forest products for sale, the department shall cause the forest products to
 29 be appraised.

30 (b) If the appraised value of the forest products exceeds [~~\$15,000~~] **\$50,000**, the department
 31 [~~shall~~] **may** not sell them to a private person, firm or corporation except after a public auction to
 32 receive competitive bids. Prior to [~~such~~] **a public** auction, the department shall give notice [~~thereof~~]
 33 **of the auction** not less than once a week for three consecutive weeks by publication in one or more
 34 newspapers of general circulation in the county in which the forest products are located and by
 35 [~~such~~] **any** other [~~media~~] **means** of communication as the department deems advisable. The **depart-**
 36 **ment shall provide the** minimum bid price and a brief statement of the terms and conditions of the
 37 sale [~~shall be~~] in the notice.

38 (c) Notice and competitive bidding under paragraph (b) of this subsection [~~shall~~] **is** not [~~be~~] re-
 39 quired if the Director of Transportation declares an emergency to exist that requires the immediate
 40 removal of the timber. If an emergency has been so declared:

41 (A) Then the timber, regardless of value, may be sold by a negotiated price; and

42 (B) The director shall make available for public inspection a written statement giving the rea-
 43 sons for declaring the emergency.

44 (5) The department's account or fund for the forest product shall be credited with the proceeds
 45 of the sale.

1 **SECTION 5.** ORS 527.745 is amended to read:

2 527.745. (1) The State Board of Forestry shall adopt standards for the reforestation of harvest
3 type 1 and harvest type 3. Unless the board makes the findings for alternate standards under sub-
4 section (2) of this section, the standards for the reforestation of harvest type 1 and harvest type 3
5 shall include the following:

6 (a) Reforestation, including site preparation, shall commence within 12 months after the com-
7 pletion of harvest and shall be completed by the end of the second planting season after the com-
8 pletion of harvest. By the end of the fifth growing season after planting or seeding, at least 200
9 healthy conifer or suitable hardwood seedlings or lesser number as permitted by the board by rule,
10 shall be established per acre, well-distributed over the area, which are “free to grow” as defined by
11 the board.

12 (b) Landowners may submit plans for alternate practices that do not conform to the standards
13 established under paragraph (a) of this subsection or the alternate standards adopted under sub-
14 section (2) of this section, including but not limited to variances in the time in which reforestation
15 is to be commenced or completed or plans to reforest sites by natural reforestation. Such alternate
16 plans may be approved if the State Forester determines that the plan will achieve equivalent or
17 better regeneration results for the particular conditions of the site, or the plan carries out an au-
18 thorized research project conducted by a public agency or educational institution.

19 (2) The board, by rule, may establish alternate standards for the reforestation of harvest type
20 1 and harvest type 3, in lieu of the standards established in subsection (1) of this section, but in no
21 case can the board require the establishment of more than 200 healthy conifer or suitable hardwood
22 seedlings per acre. Such alternate standards may be adopted upon finding that the alternate stan-
23 dards will better assure the continuous growing and harvesting of forest tree species and the
24 maintenance of forestland for such purposes, consistent with sound management of soil, air, water,
25 fish and wildlife resources based on one or more of the following findings:

26 (a) Alternate standards are warranted based on scientific data concerning biologically effective
27 regeneration;

28 (b) Different standards are warranted for particular geographic areas of the state due to vari-
29 ations in climate, elevation, geology or other physical factors; or

30 (c) Different standards are warranted for different tree species, including hardwoods, and for
31 different growing site conditions.

32 (3) Pursuant to ORS 527.710, the board may adopt definitions, procedures and further regulations
33 to implement the standards established under subsection (1) of this section, without making the
34 findings required in subsection (2) of this section, if those procedures or regulations are consistent
35 with the standards established in subsection (1) of this section.

36 (4) The board shall encourage planting of disease and insect resistant species in sites infested
37 with root pathogens or where planting of susceptible species would significantly facilitate the spread
38 of a disease or insect pest and there are immune or more tolerant commercial species available
39 which are adapted to the site.

40 (5) Notwithstanding subsections (1), (2) and (3) of this section, in order to remove potential dis-
41 incentives to the conversion of underproducing stands, as defined by the board, or the salvage of
42 stands that have been severely damaged by wildfire, insects, disease or other factors beyond the
43 landowner’s control, the State Forester may suspend the reforestation requirements for specific
44 harvest type 1 or harvest type 3 units in order to take advantage of the Forest Resource Trust
45 provisions, or other cost-share programs administered by the State Forester or where the State

1 Forester is the primary technical adviser. Such suspension may occur only on an individual case
2 basis, in writing, based on a determination by the State Forester that the cost of harvest prepara-
3 tion, harvest, severance and applicable income taxes, logging, site preparation, reforestation and any
4 other measures necessary to establish a free to grow forest stand will likely exceed the gross re-
5 venues of the harvest. The board shall adopt rules implementing this subsection establishing the
6 criteria for and duration of the suspension of the reforestation requirements.

7 **(6) Notwithstanding subsections (1), (2) and (3) of this section, the State Forester shall**
8 **consult with the Department of Transportation concerning reforestation requirements for**
9 **harvest type 1 and harvest type 3. The State Forester shall waive reforestation requirements**
10 **in areas deemed to be unsuitable for reforestation by the department in order to maintain**
11 **motorist safety and to protect highways, bridges and utility lines.**

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