

Enrolled Senate Bill 862

Sponsored by Senators VERGER, BATES, DINGFELDER, EDWARDS; Senator JOHNSON

CHAPTER

AN ACT

Relating to woody biomass; creating new provisions; and amending ORS 526.005, 526.277, 526.280 and 527.620.

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 526.

SECTION 2. Notwithstanding ORS 530.059, the State Forester may enter into contracts under ORS 530.050 to provide a supply of woody biomass from forestlands managed by the State Forestry Department as needed to facilitate the development of projects, including but not limited to bioenergy projects. The department shall ensure that the provisions of contracts described in this section comply with applicable state forestland management plans. A contract described in this section is a sale of timber for purposes of the public contracting exemption described in ORS 279A.025 (2)(L).

SECTION 3. ORS 526.005 is amended to read:

526.005. As used in this chapter, unless the context otherwise requires:

(1) "Biomass" means any organic matter, including woody biomass, agricultural crops, wood wastes and residues, plants, aquatic plants, grasses, residues, fibers, animal wastes, municipal wastes and other waste materials.

[(1)] (2) "Board" means the State Board of Forestry.

[(2)] (3) "Certified Burn Manager" means an individual, other than the forester, who is currently certified under a program established pursuant to ORS 526.360 (3).

[(3)] (4) "Department" means the State Forestry Department.

[(4)] (5) "Forester" means the State Forester or the authorized representative of the forester.

[(5)(a)] (6)(a) "Forestland" means any woodland, brushland, timberland, grazing land or clearing that, during any time of the year, contains enough forest growth, slashing or vegetation to constitute, in the judgment of the forester, a fire hazard, regardless of how the land is zoned or taxed.

(b) As used in this subsection, "clearing" means any grassland, improved area, lake, meadow, mechanically or manually cleared area, road, rocky area, stream or other similar opening that is surrounded by or contiguous to land described in paragraph (a) of this subsection and that has been included in areas classified as forestland under ORS 526.305 to 526.370.

[(6)] (7) "Forestry carbon offset" means a transferable unit based on a measured amount of carbon storage expressed as a carbon dioxide emission equivalent, or other equivalent standard, and accruing on forestland as live or dead matter in trees, shrubs, forest litter and soil.

[(7)] (8) "Nonindustrial private forest landowner" means any forest landowner who does not own a forest products manufacturing facility that employs more than six people.

[8] (9) “Nonindustrial private forestland” means any forestland owned by a nonindustrial private forest landowner.

(10)(a) **“Woody biomass” means material from trees and woody plants, including limbs, tops, needles, leaves and other woody parts, grown in a forest, woodland, farm, rangeland or wildland-urban interface environment that is the by-product of forest management, ecosystem restoration or hazardous fuel reduction treatment.**

(b) **“Woody biomass” does not mean:**

(A) **Wood pieces that have been treated with creosote, pentachlorophenol, copper chrome arsenic or other chemical preservatives;**

(B) **Wood that must be retained under state or federal regulations;**

(C) **Wood required for large woody debris recruitment; or**

(D) **Municipal solid waste.**

SECTION 4. ORS 526.277 is amended to read:

526.277. The Legislative Assembly finds and declares that:

(1) Forestlands in federal, state and private ownership comprise some of the most important environmental, economic and recreational resources in the State of Oregon. However, federal lands, and to a lesser extent state and private lands, are increasingly jeopardized by the risk of drought-induced mortality, severe insect and disease outbreaks and catastrophic wildfires.

(2) Enhancing forest health, wildlife habitat and other ecological values and reducing the risk of severe insect and disease outbreaks and catastrophic wildfires through forest management are of interest to the residents of this state. Federal and state funds have not proved sufficient to carry out the management activities necessary to achieve these goals on federal lands, and it is unlikely that the funds will be available on a continuous basis.

(3) The development of new market-based solutions to reduce the risk of severe insect and disease outbreaks and catastrophic wildfires may reduce the requirement for public funding. The development of biomass markets, including energy markets, that use [forest] **woody** biomass unsuitable for lumber, pulp and paper products as a primary source of raw material may assist in the creation of a sustainable, market-based model for restoring complexity and structure to Oregon’s forests.

(4) A biomass-based industry may provide a renewable source of energy, reduce net greenhouse gas emissions, reduce air pollution from wildfires, improve fish and wildlife habitat, create jobs and provide economic benefits to rural communities. Through the collection and conversion of [forest] **woody** biomass, ancillary benefits may be realized through the improvement in forest health, the protection of infrastructure and the stabilization of soils within critical watersheds.

(5) The collection and conversion of [forest] **woody** biomass diminishes fuel loads and is an ecologically and economically sustainable practice where the reintroduction of fire is not appropriate.

(6) The policy of this state is to support efforts to build, and place in service, biomass-fueled energy production facilities that utilize biomass collected from forests or derived from other sources such as agricultural crop residue when:

(a) The facilities utilize sustainable supplies of biomass from cost-effective sources;

(b) The use of woody biomass for energy maintains or enhances the biological productivity of the land, taking into consideration transportation costs, existing forest conditions, management objectives, vegetation growth rates and the need to sustain water quality and fish and wildlife habitat; and

(c) The set of forest values to be sustained, in addition to wood and biomass for energy, is considered. Forest values include forest products, water, wildlife and recreation.

[7] *As used in this section and ORS 526.280:*

(a) *“Biomass” means any organic matter, including woody biomass, agricultural crops, wood wastes and residues, plants, aquatic plants, grasses, residues, fibers, animal wastes, municipal wastes and other waste materials.*

(b) *“Woody biomass” means material from trees and woody plants, including limbs, tops, needles, leaves and other woody parts, grown in a forest, woodland, farm, rangeland or wildland-urban inter-*

face environment that is the by-product of forest management, ecosystem restoration or hazardous fuel reduction treatment.]

SECTION 5. ORS 526.280 is amended to read:

526.280. In furtherance of the policy established in ORS 526.277, the State Forester shall:

(1) Establish a policy of active and inclusive communication with the federal government, public bodies as defined in ORS 174.109, residents of Oregon and interested parties regarding the utilization of woody biomass produced through forest health restoration. The State Forester shall actively utilize the statutory provisions of the National Forest Management Act of 1976, the Forest and Rangeland Renewable Resources Planning Act of 1974, the National Environmental Policy Act of 1969, the Federal Land Policy and Management Act of 1976 and the Healthy Forests Restoration Act of 2003 that allow the state to participate in federal policy development in a manner that expresses the policy established in ORS 526.277.

(2) Promote public involvement in the identification of the areas of interface between urban lands and forestlands that pose the highest potential to threaten lives and private property.

(3) Solicit public comment on the location of biomass-based energy projects and conversion facilities.

(4) Promote public understanding, through education and outreach, of forest conditions, forest management options, the potential benefits and potential consequences of woody biomass utilization, the quality and quantity of woody biomass on federal lands and the potential for woody biomass utilization to assist in reducing wildfire risk and in enhancing forest health, diversity and resilience. The State Forestry Department may coordinate with the State Department of Energy, the Oregon Business Development Department, Oregon State University, the State Department of Fish and Wildlife, the Department of Environmental Quality and other entities in any education and outreach performed pursuant to this subsection.

[(5) Allow the State Forestry Department to conduct inventories of the types of woody biomass available and to serve as an information resource for persons seeking to utilize woody biomass for energy development. Notwithstanding ORS 192.501, reports on any inventories of biomass conducted by the department shall be made available for public inspection.]

(5) Assess the types of woody biomass available and serve as an information resource for persons seeking to utilize woody biomass for energy development. Notwithstanding ORS 192.501, reports on any assessment of woody biomass conducted by the State Forester shall be made available for public inspection.

(6) Promote public understanding that woody biomass utilization may be an effective tool for restoration of forest health and for economic development in rural communities.

(7) Develop and apply, with advice from the forestry program at Oregon State University, the State Department of Fish and Wildlife, the Department of Environmental Quality and other sources, the best available scientific knowledge and technologies pertaining to forest and wildlife habitat restoration and woody biomass utilization when developing rules under ORS 527.630.

(8) Seek opportunities to provide a source of woody biomass from federal, tribal, state and private forests.

(9) **Periodically** prepare a report [*every three years*] utilizing, to the greatest extent practicable, data collected from state and federal sources that specify the effect of woody biomass collection and conversion on the plant and wildlife resources and on the air and water quality of this state. The report shall identify any changes that the State Forester determines are necessary to encourage woody biomass collection and conversion and to avoid negative effects on the environment from woody biomass collection and conversion. The State Forester shall submit the report to the Governor and to an appropriate legislative interim committee with jurisdiction over forestry issues.

SECTION 6. ORS 527.620 is amended to read:

527.620. As used in ORS 527.610 to 527.770, 527.990 and 527.992:

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

(2) "Cumulative effects" means the impact on the environment which results from the incremental impact of the forest practice when added to other past, present and reasonably foreseeable

future forest practices regardless of what governmental agency or person undertakes such other actions.

(3) "DBH" means the diameter at breast height which is measured as the width of a standing tree at four and one-half feet above the ground, on the uphill side.

(4) "Edge of the roadway" means:

(a) For interstate highways, the fence.

(b) For all other state highways, the outermost edge of pavement, or if unpaved, the edge of the shoulder.

(5) "Forest practice" means any operation conducted on or pertaining to forestland, including but not limited to:

(a) Reforestation of forestland;

(b) Road construction and maintenance;

(c) Harvesting of forest tree species;

(d) Application of chemicals; *[and]*

(e) Disposal of slash[.]; **and**

(f) Removal of woody biomass.

(6) "Forest tree species" means any tree species capable of producing logs, fiber or other wood materials suitable for the production of lumber, sheeting, pulp, firewood or other commercial forest products except trees grown to be Christmas trees as defined in ORS 571.505 on land used solely for the production of Christmas trees.

(7) "Forestland" means land that is used for the growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.

(8) "Harvest type 1" means an operation that requires reforestation but does not require wildlife leave trees. A harvest type 1 is an operation that leaves a combined stocking level of free to grow seedlings, saplings, poles and larger trees that is less than the stocking level established by rule of the board that represents adequate utilization of the productivity of the site.

(9) "Harvest type 2" means an operation that requires wildlife leave trees but does not require reforestation. A harvest type 2 does not require reforestation because it has an adequate combined stocking of free to grow seedlings, saplings, poles and larger trees, but leaves:

(a) On Cubic Foot Site Class I, II or III, fewer than 50 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre;

(b) On Cubic Foot Site Class IV or V, fewer than 30 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre; or

(c) On Cubic Foot Site Class VI, fewer than 15 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre.

(10) "Harvest type 3" means an operation that requires reforestation and requires wildlife leave trees. This represents a level of stocking below which the size of operations is limited under ORS 527.740 and 527.750.

(11) "Landowner" means any individual, combination of individuals, partnership, corporation or association of whatever nature that holds an ownership interest in forestland, including the state and any political subdivision thereof.

(12) "Operation" means any commercial activity relating to the establishment, management or harvest of forest tree species except as provided by the following:

(a) The establishment, management or harvest of Christmas trees, as defined in ORS 571.505, on land used solely for the production of Christmas trees.

(b) The establishment, management or harvest of hardwood timber, including but not limited to hybrid cottonwood, that is:

(A) Grown on land that has been prepared by intensive cultivation methods and that is cleared of competing vegetation for at least three years after tree planting;

(B) Of a species marketable as fiber for inclusion in the furnish for manufacturing paper products;

- (C) Harvested on a rotation cycle that is 12 or fewer years after planting; and
- (D) Subject to intensive agricultural practices such as fertilization, cultivation, irrigation, insect control and disease control.
- (c) The establishment, management or harvest of trees actively farmed or cultured for the production of agricultural tree crops, including nuts, fruits, seeds and nursery stock.
- (d) The establishment, management or harvest of ornamental, street or park trees within an urbanized area, as that term is defined in ORS 221.010.
- (e) The management or harvest of juniper species conducted in a unit of less than 120 contiguous acres within a single ownership.
- (f) The establishment or management of trees intended to mitigate the effects of agricultural practices on the environment or fish and wildlife resources, such as trees that are established or managed for windbreaks, riparian filters or shade strips immediately adjacent to actively farmed lands.
- (g) The development of an approved land use change after timber harvest activities have been completed and land use conversion activities have commenced.
- (13) "Operator" means any person, including a landowner or timber owner, who conducts an operation.
- (14) "Single ownership" means ownership by an individual, partnership, corporation, limited liability company, trust, holding company or other business entity, including the state or any political subdivision thereof. Single ownership includes ownership held under different names or titles where the same individual or individuals, or their heirs or assigns, are shareholders (other than those of public corporations whose stock is traded on the open market), partners, business trustees or officers, or otherwise have an interest in or are associated with each property.
- (15) "State Forester" means the State Forester or the duly authorized representative of the State Forester.
- (16) "Suitable hardwood seedlings" means any hardwood seedling that will eventually yield logs or fiber, or both, sufficient in size and quality for the production of lumber, plywood, pulp or other forest products.
- (17) "Timber owner" means any individual, combination of individuals, partnership, corporation or association of whatever nature, other than a landowner, that holds an ownership interest in any forest tree species on forestland.
- (18) "Visually sensitive corridor" means forestland extending outward 150 feet, measured on the slope, from the outermost edge of the roadway of a scenic highway referred to in ORS 527.755, along both sides for the full length of the highway.
- (19) "Wildlife leave trees" means trees or snags required to be retained as described in ORS 527.676 (1).
- (20) "Written plan" means a document prepared by an operator, timber owner or landowner that describes how the operation is planned to be conducted.
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Passed by Senate April 27, 2011

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 25, 2011

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Received by Governor:

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Approved:

.....M,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

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Kate Brown, Secretary of State