

Senate Bill 862

Sponsored by Senator VERGER

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**.

Authorizes State Forestry Department to enter into contracts and leases for sale or use of woody biomass from state forestlands and for related activities. Authorizes department to maintain list of potential sources of woody biomass and determine supply of woody biomass available for use on sustainable basis without damage to forestlands.

A BILL FOR AN ACT

1
2 Relating to woody biomass; creating new provisions; and amending ORS 526.005 and 526.277.

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

4 **SECTION 1. Sections 2 to 4 of this 2011 Act are added to and made a part of ORS chapter**
5 **526.**

6 **SECTION 2. (1) The State Forestry Department may maintain a list of all potential**
7 **sources of woody biomass on state forestland for the purposes of identifying the availability**
8 **of woody biomass and making woody biomass available for sale, exploration, collection, pro-**
9 **cessing, storage and stockpiling and conversion into energy or biofuel or for use in a**
10 **biorefinery or similar uses. The department may limit sales under woody biomass supply**
11 **contracts described in section 3 of this 2011 Act or the use of woody biomass under leases**
12 **described in section 4 of this 2011 Act if the department finds that:**

13 (a) **The available supply of woody biomass in an area has been depleted; and**

14 (b) **Further exploration and collection of woody biomass may be unsustainable or**
15 **threaten the long-term health of the forest.**

16 (2) **The department may increase the supply of available woody biomass to alleviate an**
17 **imminent hazard to forest health caused by unforeseen severe insect or disease conditions**
18 **or to mitigate damage to forest resources caused by fire, wind, flood or similar natural dis-**
19 **asters and events.**

20 **SECTION 3. (1) The State Forestry Department may enter into woody biomass supply**
21 **contracts for the purpose of providing a supply of woody biomass during the term of a con-**
22 **tract. Except as provided in section 4 (4) of this 2011 Act, the term of a contract may not**
23 **exceed five years. A contract must provide for the contract to terminate immediately upon**
24 **the removal of the volume of woody biomass specified in the contract and the completion of**
25 **any other terms and conditions of the contract.**

26 (2) **The department may authorize the sale of woody biomass in a contract for the sale**
27 **of minerals or other forestland resources if the department:**

28 (a) **Requires a separate bid for the woody biomass and selects the highest bid for the**
29 **woody biomass separately from the bid for the minerals or other resources; or**

30 (b) **Expressly includes woody biomass as an element of the sale of the minerals or other**

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 resources to be sold under the contract. The time allowed under the contract for removal
2 of the woody biomass may not exceed the time allowed under the contract for removal of the
3 minerals or other resources.

4 (3) The department must specify in each contract an annual limit on the total volume
5 or tonnage of woody biomass to be supplied from a specific area based upon the amount of
6 woody biomass identified by the department as being available in that area for collection on
7 a sustainable basis. The contract shall provide that the department may unilaterally reduce
8 the volume or tonnage of woody biomass to be supplied if the department:

9 (a) Determines that the available supply has been depleted and that further removal of
10 woody biomass may be unsustainable or adversely affect the long-term health of the forest;
11 and

12 (b) Provides the contracting party with a minimum of six months' notice prior to re-
13 ducing the volume or tonnage to be supplied.

14 (4) The department may renew a contract under this section for up to three additional
15 terms, not to exceed five years each, if the department finds that:

16 (a) A sustainable supply of woody biomass is estimated to be available for the renewal
17 term;

18 (b) The payment under the contract represents the fair market value at the time of the
19 renewal; and

20 (c) The contract is for the purchase of the amount of woody biomass estimated to be
21 available.

22 (5) The department shall include in any calculation of timber harvest levels woody
23 biomass that is included in a supply contract for the sale of minerals or other forestland
24 resources. The department shall exclude from any calculation of timber harvest levels woody
25 biomass sold under a supply contract that is not for the sale of minerals or other forestland
26 resources.

27 **SECTION 4.** (1) The State Forestry Department may execute leases of state forestlands
28 to allow the sale, exploration, collection, processing, storage and stockpiling or conversion
29 into energy or biofuel or the development of biorefineries or similar uses of woody biomass.

30 (2) Leases authorized under this chapter may be entered into as provided under ORS
31 530.050 or by negotiation. Leases authorized under this section may be for a term of not more
32 than 50 years.

33 (3) If a lease agreement provides for the lessee to make a capital investment of not less
34 than \$50 million to develop biomass processing, biofuel manufacturing or biomass energy
35 production facilities, the lease shall provide for reduced rent until a development plan is
36 completed and approved and the facility is operational. The lease shall include provisions that
37 require:

38 (a) Adequate assurances to protect the interest of the department in receiving a future
39 rental income stream;

40 (b) The demonstration of reasonable progress consistent with an approved development
41 plan; and

42 (c) A lump sum payment to the department in the amount of the difference between the
43 fair market rent and the reduced rent, if the approved development plan is not completed in
44 the time required in the plan.

45 (4) If a lessee described in subsection (3) of this section of land under this section enters

1 into a supply contract as described in section 3 of this 2011 Act, the supply contract may be
 2 for a period of 15 years and be renewable for three periods of five years each. The contract
 3 shall require that the department limit the total volume or tonnage of woody biomass that
 4 the department makes available in the area through other supply contracts to the extent
 5 necessary to ensure that the amount of woody biomass identified by the department as being
 6 available in the area for collection on a sustainable basis is sufficient to meet the supply
 7 contract needs of the lessee for the lesser of five years or the remainder of the contract
 8 term.

9 (5) The department may require a lessee to pay production rent or other compensation
 10 for the use of the land or of woody biomass on the land. If use of the land or woody biomass
 11 by the lessee is not provided for in a supply contract, the department shall require the lessee
 12 to pay a royalty for the contribution to value of any product created by the lessee that is
 13 associated with woody biomass removed from the leased land.

14 **SECTION 5.** ORS 526.005 is amended to read:

15 526.005. As used in this chapter, unless the context otherwise requires:

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

19 [(1)] (2) “Board” means the State Board of Forestry.

20 [(2)] (3) “Certified Burn Manager” means an individual, other than the forester, who is currently
 21 certified under a program established pursuant to ORS 526.360 (3).

22 [(3)] (4) “Department” means the State Forestry Department.

23 [(4)] (5) “Forester” means the State Forester or the authorized representative of the forester.

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

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

31 [(6)] (7) “Forestry carbon offset” means a transferable unit based on a measured amount of
 32 carbon storage expressed as a carbon dioxide emission equivalent, or other equivalent standard, and
 33 accruing on forestland as live or dead matter in trees, shrubs, forest litter and soil.

34 [(7)] (8) “Nonindustrial private forest landowner” means any forest landowner who does not own
 35 a forest products manufacturing facility that employs more than six people.

36 [(8)] (9) “Nonindustrial private forestland” means any forestland owned by a nonindustrial pri-
 37 vate forest landowner.

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

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

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

45 (B) **Wood from old-growth forests, except wood removed for enhancing forest health;**

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

2 (D) Municipal solid waste.

3 **SECTION 6.** ORS 526.277 is amended to read:

4 526.277. The Legislative Assembly finds and declares that:

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

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

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

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

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

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

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

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

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

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

38 [*(a) "Biomass" means any organic matter, including woody biomass, agricultural crops, wood*
39 *wastes and residues, plants, aquatic plants, grasses, residues, fibers, animal wastes, municipal wastes*
40 *and other waste materials.*]

41 [*(b) "Woody biomass" means material from trees and woody plants, including limbs, tops, needles,*
42 *leaves and other woody parts, grown in a forest, woodland, farm, rangeland or wildland-urban inter-*
43 *face environment that is the by-product of forest management, ecosystem restoration or hazardous fuel*
44 *reduction treatment.*]