

Senate Bill 803

Sponsored by Senator GIROD

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**.

Requires State Forester to conduct forest product sales by public auction with bidding on weight or lump sum basis. Caps amount of performance bond or other security provided by successful bidder.

Allows State Forester to change or modify sale contract terms based on unforeseen circumstances affecting timing of purchaser actions to carry out contract. Requires State Board of Forestry to create standard contract clauses for State Forester's use in granting purchaser additional time to perform.

Requires State Forester to take action to ensure sale of consistent amount of forest products quarterly on sustained basis.

Makes bonding or other security requirements for forest product sales by Department of State Lands and provisions for department's return of bonds and other securities equivalent to revised bonding or other security requirements and provisions for return of bonds or securities applicable for forest product sales by State Forester.

Applies to forest product sales on or after January 1, 2014.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to forest products; creating new provisions; amending ORS 273.535, 530.059, 530.065 and
3 530.500; and declaring an emergency.

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

5 **SECTION 1. Sections 2 and 3 of this 2013 Act are added to and made a part of ORS**
6 **chapter 530**

7 **SECTION 2. The State Forester may require the successful purchaser at a forest pro-**
8 **ducts sale to provide a surety bond, cash deposit, assignment of surety, irrevocable letters**
9 **of credit or other securities as determined acceptable by the State Forester for the purpose**
10 **of securing performance by the purchaser. The required amount of a bond, deposit, assign-**
11 **ment, letter of credit or other security may not be more than \$500,000. Claims by any person**
12 **against the bond, deposit, assignment, letter of credit or other security shall be made to the**
13 **State Forester for determination. If the claim is disputed, the State Forester may request**
14 **settlement of the claim through compromise or mediation or require that the claim be liti-**
15 **gated. Unless there is a claim awaiting determination, the State Forester shall return any**
16 **unexpended amount from the bond, deposit, assignment, letter of credit or other security**
17 **no later than 90 days after the earlier of the completion of operations under the sales con-**
18 **tract or the termination date in the sales contract.**

19 **SECTION 3. The duty of the State Forester to secure the greatest permanent value of**
20 **forests and forestlands under ORS 530.050 and 530.490 shall include taking all necessary,**
21 **reasonable or expedient actions to provide for sale of a consistent amount of forest products**
22 **from those forests and forestlands quarterly on a sustained basis.**

23 **SECTION 4. ORS 530.059 is amended to read:**

24 530.059. (1) Before offering any forest products for sale under authority of ORS 530.050 or

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.

1 530.500, the State Forester shall cause the forest products to be appraised. [*Should the appraised*
 2 *value of the forest products be in excess of \$25,000, the State Forester shall not sell the same to a*
 3 *private person, firm or corporation, except after giving notice of the sale as required by this section,*
 4 *and affording an opportunity for competitive bidding either by public auction or through sealed bids,*
 5 *or a combination of both; provided, however, that such notice and opportunity for competitive bidding*
 6 *will not be]* **If bidding for the forest products will be on a weight basis, the appraisal must**
 7 **include, but need not be limited to, an estimation of the weight of the forest products to be**
 8 **sold. The State Board of Forestry shall adopt rules establishing a set of standard conditions**
 9 **for use in expressing the estimated weight of forest products. Except as provided in this**
 10 **subsection, if the appraised value of the forest products exceeds \$25,000, the State Forester**
 11 **may sell the forest products to a private person, firm or corporation only after giving notice**
 12 **of the sale as required by this section and affording an opportunity for competitive bidding**
 13 **by public auction. Notice and an opportunity for competitive bidding by public auction is not**
 14 required for sales in connection with:

15 (a) Experimental or research projects in the field of forestland management or forest product
 16 utilization.

17 (b) The removal, injury or destruction of forest products necessitated by any grant of easement
 18 or right of way, or necessitated by a permit or license to use a right of way, including trees which
 19 may endanger the use of such easement or way.

20 (c) The removal of forest products with an appraised value of less than \$100,000 that, as a result
 21 of an act of nature or other unforeseen circumstance:

22 (A) Pose a threat to the health of the forests, waterways or forest road infrastructures; or

23 (B) Will lose value as a result of potential theft.

24 (d) The removal of forest products with an appraised value of less than \$100,000 to facilitate the
 25 development, placement or maintenance of forest road infrastructures.

26 (2) The State Forester shall give the notice required by subsection (1) of this section by mail to
 27 all persons requesting such notice and in such other media of communication as the State Forester
 28 may deem advisable. The State Forester shall maintain a mailing list with the names and addresses
 29 of persons who have requested to receive State Forestry Department notices of timber sales. The
 30 notice shall describe the forest products to be sold and the land on which such products are situ-
 31 ated, state the minimum price at which the same may be sold, **state whether the bidding will be**
 32 **on a weight or lump sum basis** and contain a brief statement of the terms of the sale. **The de-**
 33 **scription of the forest products to be sold may include an estimate of the volume being sold**
 34 **and, if the bidding is on a weight basis, must state the estimated weight.** As a provision of
 35 each sale, the State Forester shall reserve the right to accept or reject any or all bids.

36 (3) Prior to or at the time [*the State Forester receives bids*] **of a public auction**, each bidder shall
 37 furnish the State Forester with a certified check, cashier's check, money order, surety bond, cash
 38 deposit, assignment of surety, irrevocable letters of credit or other securities as determined accept-
 39 able by the State Forester in an amount designated by the State Forester. [*but said amount shall*]
 40 **The amount designated by the State Forester may not exceed 10 percent of the minimum price**
 41 **of the forest products to be sold**[, *which check, order or deposit, in the case of the successful bidder,*
 42 *shall be retained by the State Forester as a credit toward payment of the purchase price of the forest*
 43 *products sold, and which, in the case of the unsuccessful bidders, shall be returned to them]* **or**
 44 **\$500,000, whichever is less. The State Forester shall retain the check, order or deposit of the**
 45 **successful bidder as a credit toward payment of the purchase price of the forest products**

1 **sold. The State Forester shall return the check, order or deposit of an unsuccessful bidder**
 2 after determination of the successful bid. Any checks, bonds or orders furnished under this sub-
 3 section shall be made payable to the State of Oregon.

4 *[(4) The State Forester is authorized to require and accept a surety bond, cash deposit, assignment*
 5 *of surety, irrevocable letters of credit or other securities as determined acceptable by the State Forester.*
 6 *Claims against such bond shall be made to the State Forester for determination. If the claim is dis-*
 7 *puted, the forester may request settlement of the claim through compromise or mediation or require the*
 8 *claim to be litigated.]*

9 **(4) The bidding at a public auction must be expressed as:**

10 **(a) Amounts offered for each unit of weight of the forest products, measured at standard**
 11 **conditions; or**

12 **(b) Lump sums offered for the forest products, regardless of the weight, volume or other**
 13 **measure of the forest products.**

14 (5) If the provisions of this section have been complied with, and no satisfactory bid has been
 15 received, or the bidder fails to complete the purchase, the State Forester may, at any time, during
 16 a period of six months after the advertised date of sale, sell the forest products in such manner as
 17 the forester deems appropriate.[, but] The sale price [shall] **may** not be less than the minimum terms
 18 offered in the notice of sale or the highest bid received, whichever is the larger amount.

19 **SECTION 5.** ORS 530.065 is amended to read:

20 530.065. (1) During the period of a [timber] **forest product** sale contract made under ORS
 21 530.059, either party may propose to change or modify the terms of the contract if unforeseen cir-
 22 cumstances develop. As used in this subsection, “unforeseen circumstances” means acts of nature
 23 or other unforeseen circumstances or conditions that:

24 (a) Affect the nature, **timing** or scope of the work to be performed or [volume] **amount** to be
 25 harvested under the terms of the sale contract made by the State Forester; or

26 (b) Require additional work or harvest in an area adjacent to a [timber] **forest product** sale
 27 made by the State Forester.

28 (2) The State Forester [is hereby authorized to] **may** change or modify the terms or conditions
 29 of the contract in the event of unforeseen circumstances requiring such change or modification un-
 30 der subsection (1) of this section only [when] **if**:

31 (a) Such change or modification is in the best interest of the State of Oregon; and

32 (b) The purchaser of the timber sale agrees that the proposed change or modification will
 33 maintain an equitable contractual relationship between the parties.

34 **(3) The State Board of Forestry shall adopt rules creating model contract clauses for use**
 35 **by the State Forester when changing or modifying contract terms to allow the purchaser**
 36 **additional time to complete the work or complete a specified amount of harvesting.**

37 **SECTION 6.** ORS 530.500 is amended to read:

38 530.500. In order to accomplish the purposes of ORS 530.490, the State Forester may:

39 (1) Protect the lands from fire, disease and insect pests, cooperate with the counties and with
 40 persons owning lands within the state in the protection of the lands and enter into all agreements
 41 necessary or convenient for the protection of the lands.

42 (2) Enter into and administer contracts for the sale of timber from lands owned or managed by
 43 the State Board of Forestry and the State Forestry Department.

44 (3) Permit the use of the lands for other purposes, including but not limited to fish and wildlife
 45 environment, landscape effect, protection against flood and erosion, recreation and production and

1 protection of water supplies when the use is not detrimental to the purpose for which the lands are
 2 dedicated.

3 (4) Contract with other governmental bodies for the protection of water supplies to facilitate the
 4 multiple use of publicly owned water supplies for recreational purposes as well as a source of water
 5 for domestic and industrial use.

6 (5) Grant permits and licenses on, over and across the lands.

7 (6) Reforest the lands and cooperate with persons owning timberlands within the state in the
 8 reforestation, and make all agreements necessary or convenient for the reforestation.

9 (7) Establish a forestry carbon offset program to market, register, transfer or sell forestry car-
 10 bon offsets. In establishing the program, the forester may:

11 (a) Execute any contracts or agreements necessary to create opportunities for the creation of
 12 forestry carbon offsets; and

13 (b) Negotiate prices that are at, or greater than, fair market value for the transfer or sale of
 14 forestry carbon offsets.

15 (8) Do all things and make all rules and regulations, not inconsistent with law, necessary or
 16 convenient for the management, protection, utilization and conservation of the lands.

17 (9) **Subject to section 2 of this 2013 Act**, require such undertakings as in the opinion of the
 18 State Forester are necessary or convenient to secure performance of any agreement authorized in
 19 ORS 530.450 to 530.520.

20 **SECTION 7.** ORS 273.535 is amended to read:

21 273.535. Bond **or other security** requirements for the sale of forest products **by the Depart-**
 22 **ment of State Lands and provisions for the return of those bonds or securities to a purchaser**
 23 shall correspond to the [*requirements for bonds*] **bond or other security requirements and pro-**
 24 **visions for the return of bonds or securities to a purchaser that are established for a forest**
 25 **product sale by the State Forester in ORS 530.059 and section 2 of this 2013 Act.**

26 **SECTION 8.** (1) **Section 2 of this 2013 Act and the amendments to ORS 530.059, 530.500**
 27 **and 273.535 by sections 4, 6 and 7 of this 2013 Act apply to bonds, deposits, assignments, let-**
 28 **ters of credit or other securities provided for forest product sales occurring on or after**
 29 **January 1, 2014.**

30 (2) **Section 3 of this 2013 Act applies to sales of forest products in calendar quarters that**
 31 **begin on or after January 1, 2014.**

32 (3) **The amendments to ORS 530.065 by section 5 of this 2013 Act applies to the removal**
 33 **of forest products sold by the State Forester under ORS 530.059 on or after January 1, 2014.**

34 **SECTION 9.** **This 2013 Act being necessary for the immediate preservation of the public**
 35 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
 36 **on its passage.**

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