

# Senate Bill 1520

Sponsored by Senator KNOPP, Representative WITT; Senators BOQUIST, FERRIOLI, GIROD, HANSELL, OLSEN, ROBLAN, THATCHER, THOMSEN, WHITSETT, Representatives DOHERTY, HACK, HOYLE, KOMP, PARRISH, WHISNANT (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**.

Requires Governor, with assistance of State Forestry Department, to attempt state entry into federal Good Neighbor Authority agreement with United States Forest Service.

Requires Secretary of State to conduct audit of State Forestry Department expenditures or obligations of certain lottery money allocations for purposes related to federal forestlands. Requires that audit include certain information concerning projects or parts of projects for which department expended or obligated moneys. Establishes deadline for reporting audit results and information to Legislative Assembly.

Establishes tax credit for reforestation of commercial forestland following loss from catastrophic fire event. Makes tax credit applicable for losses from catastrophic fire events occurring in whole or in part on or after November 1, 2015, and on or before October 31, 2021. Makes tax credit available up to three tax years after year in which State Forester issues preliminary certificate for loss.

Adds woody biomass to types of appropriate green energy technology for which contracting agency must set aside 1.5 percent of contract price for public building construction, reconstruction or renovation.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

Relating to forest resources; creating new provisions; amending ORS 279C.527; and prescribing an effective date.

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

## GOOD NEIGHBOR AGREEMENT

### **SECTION 1. The Legislative Assembly finds and declares that:**

**(1) In 2014 Congress expanded the Good Neighbor Authority, allowing the United States Forest Service to enter into cooperative agreements or contracts with states to allow those states to perform watershed restoration and forest management services on National Forest System lands.**

**(2) Multiple states have signed Master Good Neighbor Agreements with the United States Forest Service to accelerate forest restoration and management activities on National Forest System lands.**

**(3) Millions of acres of National Forest System lands within the State of Oregon pose serious risks to life, property and public safety from catastrophic wildfire, disease and insect infestation.**

**(4) State government in Oregon has not utilized Good Neighbor Authority despite Oregon having over 14 million acres of National Forest System land and despite the Legislative Assembly having provided funding for the management of federal forestlands.**

**(5) Proper active-management practices in all forests within Oregon are critical to pre-**

**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.

venting catastrophic wildfire, preventing carbon emissions from catastrophic wildfire, promoting overall forest health and providing jobs to Oregonians.

**SECTION 2.** Section 1 of this 2016 Act is repealed January 2, 2017.

**SECTION 3.** The Governor, assisted by the State Forestry Department, shall initiate efforts to enter into a Master Good Neighbor Agreement with the United States Forest Service. The Governor and the department shall take all actions within the control of the Governor or the department necessary or proper to:

- (1) Ensure that the agreement gives proper attention to the urgent need to address the large-scale forest health crisis on National Forest System lands within Oregon; and
- (2) Complete entry into the agreement on or before August 1, 2016.

**AUDIT**

**SECTION 4.** (1) The Secretary of State shall conduct an audit of expenditures or obligations made by the State Forestry Department prior to January 1, 2017, funded with:

(a) The \$2.885 million of lottery moneys allocated to the department for the 2013-2015 biennium under section 12, chapter 785, Oregon Laws 2013, for the Eastern Oregon Forest Collaboration; and

(b) The \$5 million of lottery moneys allocated to the department for the 2015-2017 biennium under section 13, chapter 811, Oregon Laws 2015, for federal forest restoration.

(2) The Secretary of State shall attempt to obtain, either directly or through the department, in addition to any records of the department, any information available from the United States Forest Service or the United States Bureau of Land Management pertaining to department expenditures or obligations prior to January 1, 2017, of moneys described in subsection (1) of this section.

(3) In conducting an audit under this section, in addition to requiring an accounting of moneys as described in subsection (1) of this section, the Secretary of State shall attempt to:

- (a) List and describe the projects that were developed, planned or implemented with the moneys;
- (b) Describe with specificity the expenditures made for each project or parts of a project fully or partially funded with the moneys;
- (c) Calculate for each project fully or partially funded with the moneys, the merchantable timber volume offered for sale; and
- (d) Calculate the number of acres treated or restored by each project fully or partially funded with the moneys.

(4) The Secretary of State shall report the results of the audit required by this section, and any information obtained under subsection (2) or (3) of this section, to the Legislative Assembly no later than March 1, 2017.

**REFORESTATION TAX CREDIT PROGRAM**

**SECTION 5.** Sections 6 to 8 of this 2016 Act are added to and made a part of ORS chapter 315.

**SECTION 6.** As used in this section and sections 7 and 8 of this 2016 Act:

- 1 (1) “Catastrophic fire event” means a fire that:
- 2 (a) Results in the payment of moneys from the Oregon Forest Land Protection Fund to
- 3 reimburse emergency fire suppression costs;
- 4 (b) Causes damage to at least 50 percent of the timber on a forestland property; or
- 5 (c) Is declared by the State Forester to be a catastrophic fire event.
- 6 (2) “Commercial forestland” has the meaning given that term in ORS 526.455.
- 7 (3) “Fire loss year” means a period that begins on November 1 each year and ends on
- 8 October 31 of the next following calendar year.
- 9 (4) “Landowner” has the meaning given that term in ORS 526.455.
- 10 (5) “Net reforestation costs” means reforestation costs minus any salvage value.
- 11 (6)(a) “Reforestation costs” means the labor, technical and other costs incurred after a
- 12 catastrophic fire event to harvest trees killed or damaged by the event, remove fuel and dead
- 13 overstory, prepare a site for replanting and replant forestland in accordance with a
- 14 reforestation project plan approved by the State Forester.
- 15 (b) “Reforestation costs” does not mean:
- 16 (A) Any expense eligible for federal cost share assistance;
- 17 (B) Any amounts paid or incurred to purchase or otherwise acquire forestland; or
- 18 (C) The cost of purchase or other acquisition of tools and equipment with a useful life
- 19 of more than one year.
- 20 (7) “Salvage value” means the monetary amount, after deduction of sales costs, realizable
- 21 from selling harvested trees killed or damaged due to a catastrophic fire event.
- 22 **SECTION 7.** (1) To apply for a preliminary certificate allowing a tax credit under section
- 23 8 of this 2016 Act, a landowner must file a written request for a preliminary certificate with
- 24 the State Forester during the period beginning November 1 and ending December 31 im-
- 25 mediately following the fire loss year in which the catastrophic fire event occurred. The request
- 26 must include, at a minimum, a reforestation project plan for the commercial forestland, any
- 27 information required by State Board of Forestry rule and any additional information that the
- 28 State Forester considers necessary or useful to determine the applicable commercial
- 29 forestland category under subsection (4) of this section. To the extent practicable, the State
- 30 Forester shall complete the processing of all written requests for preliminary certificates for
- 31 a fire loss year no later than March 1 following the close of the request filing period.
- 32 (2) The State Forester shall issue the landowner a preliminary certificate under this
- 33 section if the State Forester determines that:
- 34 (a) The commercial forestland of the landowner has incurred damage from a catastrophic
- 35 fire event;
- 36 (b) The landowner has filed or agreed to an acceptable reforestation project plan for the
- 37 commercial forestland; and
- 38 (c) The landowner is likely to incur net reforestation costs under the reforestation
- 39 project plan.
- 40 (3) The board shall adopt rules establishing commercial forestland categories for use by
- 41 the State Forester in calculating the maximum net reforestation costs resulting from a
- 42 catastrophic fire event for which a tax credit could be allowed under section 8 of this 2016
- 43 Act. The factors that the board considers in identifying a commercial forestland category
- 44 may include, but need not be limited to, slope, age class and tree species.
- 45 (4) The State Forester shall determine the commercial forestland category applicable to

1 commercial forestland described in a preliminary certificate application. The State Forester  
 2 shall use the commercial forestland categories to calculate, for each preliminary certificate,  
 3 the maximum net reforestation costs for which a tax credit could be allowed under section  
 4 8 of this 2016 Act. However, if the total of all preliminary certificates to be issued for a fire  
 5 loss year would exceed \$2 million, the State Forester shall reduce the maximum net  
 6 reforestation costs for each certificate on a pro rata basis.

7 (5) In accordance with applicable provisions of ORS chapter 183, the board may adopt  
 8 rules necessary for the administration of this section.

9 **SECTION 8.** (1) Except as provided in subsections (5) and (6) of this section, a credit  
 10 against the taxes otherwise due under ORS chapter 316, or, if the taxpayer is a corporation,  
 11 under ORS chapter 317 or 318, shall be allowed to a taxpayer possessing a preliminary cer-  
 12 tificate issued under section 7 of this 2016 Act.

13 (2) For the tax year in which the preliminary certificate is issued, the amount of the  
 14 credit is the lesser of:

15 (a) Fifty percent of the net reforestation costs actually paid or incurred by the taxpayer  
 16 during the tax year due to a catastrophic fire event; or

17 (b) Twelve and one-half percent of the maximum net reforestation costs allowed under  
 18 the preliminary certificate.

19 (3) For the two tax years next following the tax year in which the preliminary certificate  
 20 is issued, the amount of the credit is the lesser of:

21 (a) Fifty percent of the net reforestation costs incurred since issuance of the preliminary  
 22 certificate, reduced by the amount of any credits claimed under the certificate in prior years;  
 23 or

24 (b) Twelve and one-half percent of the maximum net reforestation costs allowed under  
 25 the preliminary certificate.

26 (4) For the third tax year next following the tax year in which the preliminary certificate  
 27 is issued, the amount of the credit is the lesser of:

28 (a) Fifty percent of the net reforestation costs incurred since issuance of the preliminary  
 29 certificate, reduced by the amount of any credits claimed under the certificate in prior years;  
 30 or

31 (b) Fifty percent of the maximum net reforestation costs allowed under the preliminary  
 32 certificate, reduced by the amount of any credits claimed under the certificate in prior years.

33 (5)(a) To qualify for a tax credit under this section, a landowner must submit an annual  
 34 certificate issued by the State Forester. The annual certificate must accompany the claim  
 35 for the credit or be otherwise filed in a manner acceptable to the Department of Revenue.  
 36 The State Forester may issue a landowner an annual certificate for the tax year only if the  
 37 State Forester is satisfied that:

38 (A) The landowner has actually incurred the reforestation costs to be claimed as a credit;

39 (B) The land remains commercial forestland; and

40 (C) The landowner has materially complied with the reforestation project plan for the  
 41 commercial forestland.

42 (b) The State Forester may, at any reasonable time, conduct a physical inspection of  
 43 commercial forestland to verify information described in paragraph (a) of this subsection.

44 (6) A credit may not be claimed under this section for net reforestation costs that a  
 45 taxpayer incurs after the third tax year following the year in which a preliminary certificate

1 is issued.

2 (7) The credit provided under this section shall be in addition to and not in lieu of any  
 3 depreciation or amortization deduction to which the taxpayer otherwise may be entitled with  
 4 respect to the reforestation project, and the credit does not affect the computation of basis  
 5 for the forestland.

6 (8) In accordance with applicable provisions of ORS chapter 183, the Department of Re-  
 7 venue and the State Forestry Department may adopt rules necessary for the administration  
 8 of this section.

9 (9) Any landowner affected by a determination regarding the net reforestation costs tax  
 10 credit made by:

11 (a) The State Forester may appeal that determination in the manner provided for in ORS  
 12 526.475 (1).

13 (b) The Department of Revenue may appeal that determination in the manner provided  
 14 for in ORS 526.475 (2).

15 **SECTION 9.** Notwithstanding ORS 315.037, sections 7 and 8 of this 2016 Act apply to  
 16 losses from catastrophic fire events in a fire loss year, as defined in section 6 of this 2016  
 17 Act, that begins on or after November 1, 2015, and ends on or before October 31, 2021.

18 **SECTION 10.** Sections 6, 7 and 8 of this 2016 Act are repealed January 2, 2028.

19  
 20 **WOODY BIOMASS**

21  
 22 **SECTION 11.** ORS 279C.527 is amended to read:

23 279C.527. (1) As used in this section and in ORS 279C.528:

24 (a)(A) “Green energy technology” means a system that employs:

25 (i) Solar or geothermal energy directly for space or water heating or to generate electricity;  
 26 [or]

27 (ii) Building design that uses solar energy passively to reduce energy use from other sources  
 28 by at least 20 percent from a level required under ORS 276.900 to 276.915 or achieved in buildings  
 29 constructed according to state building code standards that the Department of Consumer and Busi-  
 30 ness Services approves under ORS 455.496[.]; or

31 (iii) **Woody biomass as a fuel for space heating or water heating or as a fuel for a com-  
 32 bined heat and power system.**

33 (B) “Green energy technology” does not include a system that:

34 (i) Uses water, groundwater or the ground as a heat source at temperatures less than 140 de-  
 35 grees Fahrenheit, or less than 128 degrees Fahrenheit if the system is used for a public school  
 36 building; or

37 (ii) Incorporates solar energy indirectly into other methods for generating energy, such as from  
 38 the action of waves on water, from hydroelectric facilities or from wind-powered turbines.

39 (b) “Public building” means a building that a public body, as defined in ORS 174.109, owns or  
 40 controls, and that is:

41 (A) Used or occupied by employees of the public body; or

42 (B) Used for conducting public business.

43 (c) **“Woody biomass” means forest products that have been harvested for the purpose  
 44 of reducing the risk of wildfire on forestland.**

45 (2)(a) Except as otherwise provided in this section, a contracting agency that intends to enter

1 into a public improvement contract for constructing a public building or for reconstructing or per-  
2 forming a major renovation of a public building, if the cost of the reconstruction or major renovation  
3 exceeds 50 percent of the value of the public building, shall first make a determination under sub-  
4 section (3) of this section as to whether green energy technology is appropriate for the public  
5 building and, if the contracting agency determines that green energy technology is appropriate, shall  
6 ensure that the public improvement contract provides an amount equal to at least 1.5 percent of the  
7 total contract price for the purpose of including appropriate green energy technology as part of the  
8 construction, reconstruction or major renovation of the public building.

9 (b) A public improvement contract to construct, reconstruct or renovate a public building may  
10 provide for constructing green energy technology at a site that is located away from the site of the  
11 public building if:

12 (A) Constructing green energy technology away from the site of the public building and using  
13 the energy from the green energy technology at the site of the public building is more cost-effective,  
14 taking into account additional costs associated with transmitting generated energy to the site of the  
15 public building, than is constructing and using green energy technology at the site of the public  
16 building;

17 (B) The green energy technology that is located away from the site of the public building is lo-  
18 cated within this state and in the same county as, or in a county adjacent to, the site of the public  
19 building; and

20 (C) The public improvement contract provides that all of the moneys for constructing green en-  
21 ergy technology away from the site of the public building must fund new energy generating capacity  
22 that does not replace or constitute a purchase and use of energy generated from green energy  
23 technology that:

24 (i) Employs solar energy and that existed on the date that the original building permit for the  
25 public building was issued; *[or]*

26 (ii) Employs geothermal energy and for which construction was completed before January 1,  
27 2013[.]; **or**

28 **(iii) Employs woody biomass as a fuel for space heating or water heating or as a fuel for**  
29 **a combined heat and power system, and that existed on the date on which the original**  
30 **building permit for the public building was issued.**

31 (c) In evaluating whether a contracting agency can construct green energy technology at a site  
32 away from the site of the public building in accordance with paragraph (b)(A) of this subsection, the  
33 contracting agency shall<sup>[:]</sup> **compare the costs of constructing green energy technology that**  
34 **employs a particular fuel source or method of energy generation at the site of the public**  
35 **building only with the corresponding costs of green energy technology that employs solar**  
36 **energy at a location away from the site of the public building.**

37 *[(A) Compare the costs of constructing green energy technology that employs solar energy at the*  
38 *site of the public building only with the corresponding costs of green energy technology that employs*  
39 *solar energy at a location away from the site of the public building; and]*

40 *[(B) Compare the costs of green energy technology that employs geothermal energy at the site of the*  
41 *public building only with the corresponding costs of green energy technology that employs geothermal*  
42 *energy at a location away from the site of the public building.]*

43 (3) In making a determination as to whether green energy technology is appropriate in con-  
44 structing, reconstructing or performing a major renovation of a public building, a contracting  
45 agency shall list in the determination the total contract price and specify the amount the agency

1 intends to expend on including green energy technology as part of the construction, reconstruction  
2 or major renovation. The State Department of Energy shall develop a form that a contracting  
3 agency may use to prepare the written determination described in this subsection.

4 (4)(a) If the contracting agency determines that green energy technology is not appropriate for  
5 the public building, subsection (2) of this section does not apply to the public improvement contract.  
6 A contracting agency's determination under this paragraph must consider whether constructing  
7 green energy technology at the site of the public building is appropriate and whether constructing  
8 green energy technology away from the site of the public building and in accordance with subsection  
9 (2)(b) and (c) of this section is appropriate.

10 (b) If subsection (2) of this section does not apply to the public improvement contract:

11 (A) The contracting agency shall spend an amount equal to at least 1.5 percent of the total  
12 contract price to include appropriate green energy technology as part of a future public building  
13 project; and

14 (B) The amount the contracting agency spends on the future public building project in accord-  
15 ance with subparagraph (A) of this paragraph is in addition to any amount required under sub-  
16 section (2) of this section for including appropriate green energy technology as part of the future  
17 public building project.

18 (5)(a) A contracting agency need not set aside the amount described in subsection (4)(b) **of this**  
19 **section** in an account or otherwise reserve moneys for a future public building at the time the  
20 contracting agency makes the determination described in subsection (3) of this section, but the  
21 contracting agency shall report the amount described in subsection (4)(b) **of this subsection** to the  
22 State Department of Energy as provided in ORS 279C.528 (2)(a).

23 (b) Subsection (4)(b) of this section does not apply to a public improvement contract for which  
24 state funds are not directly or indirectly used.

25 (6)(a) This section does not exempt an authorized state agency, as defined in ORS 276.905, from  
26 complying with ORS 276.900 to 276.915, except that an authorized state agency, without complying  
27 with ORS 276.900 to 276.915, may determine that green energy technology is appropriate to include  
28 as part of constructing, reconstructing or performing a major renovation of a public building.

29 (b) A contracting agency may not use an amount described in subsection (4)(b) of this section  
30 to comply with requirements set forth in ORS 276.900 to 276.915 or with a state building code  
31 standard that the Department of Consumer and Business Services approves under ORS 455.496.

32 (7) Notwithstanding the provisions of ORS 174.108 (3), this section applies to intergovernmental  
33 entities described in ORS 174.108 (3).

34 **SECTION 12. The amendments to ORS 279C.527 by section 11 of this 2016 Act apply to**  
35 **public improvement contracts that a contracting agency first advertises or otherwise solicits**  
36 **or, if the contracting agency does not advertise or solicit the public improvement contract,**  
37 **to public improvement contracts into which the contracting agency first enters on or after**  
38 **the effective date of this 2016 Act.**

#### 39 CAPTIONS

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42 **SECTION 13. The unit captions used in this 2016 Act are provided only for the conven-**  
43 **ience of the reader and do not become part of the statutory law of this state or express any**  
44 **legislative intent in the enactment of this 2016 Act.**

**EFFECTIVE DATE**

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**SECTION 14. This 2016 Act takes effect on the 91st day after the date on which the 2016 regular session of the Seventy-eighth Legislative Assembly adjourns sine die.**

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