

# Enrolled House Bill 2984

Sponsored by Representatives PARRISH, BUEHLER, WITT; Representatives BARKER, BARTON, BOONE, BUCKLEY, DAVIS, DOHERTY, ESQUIVEL, EVANS, FAGAN, GALLEGOS, GOMBERG, GORSEK, HACK, HELM, HUFFMAN, JOHNSON, KENNEMER, KENY-GUYER, KRIEGER, LIVELY, MCKEOWN, MCLAIN, NOSSE, OLSON, READ, REARDON, SMITH, WARNER, WEIDNER, WHITSETT, WILLIAMSON, Senators BAERTSCHIGER JR, BOQUIST, DEVLIN, GIROD, HANSELL, HASS, JOHNSON, KNOPP, MONROE, OLSEN, RILEY, ROBLAN, SHIELDS, STEINER HAYWARD, THATCHER, THOMSEN, WINTERS

CHAPTER .....

AN ACT

Relating to forestry product cooperatives; and declaring an emergency.

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

**SECTION 1. As used in sections 1 to 7 of this 2015 Act:**

(1) **“Clackamas Forestry Product Cooperative Project” means the pilot program established by Clackamas County under section 3 of this 2015 Act for forestry products grown on nonforest land within the county to be commercially produced and marketed through a forestry products cooperative.**

(2) **“Dealer” means a person or agent of a person, other than a cooperative, that purchases or contracts to purchase forestry products through the Clackamas Forestry Product Cooperative Project.**

(3) **“Forestland” means land for which the highest and best use is the growing of forestry products.**

(4) **“Forestry products”:**

(a) **Except as provided in paragraph (b) of this subsection, means products from harvested timber.**

(b) **Does not mean products from short rotation fiber grown under agricultural conditions as described in ORS 321.267 (3) or 321.824 (3), western juniper or products from harvested western juniper.**

(5) **“Nonforest lands” means lands other than forestland.**

(6) **“Party” means Clackamas County or a Clackamas County employee or a producer or dealer that carries out activities or engages in transactions regarding the Clackamas Forestry Product Cooperative Project.**

(7) **“Producer” means a possessor of land on which trees are grown for harvesting as forestry products.**

**SECTION 2. (1) The Legislative Assembly finds and declares that because of the logistical challenges associated with the utilization of individual trees on nonforest lands, and because of the benefits from gains in commercial production and marketing of forestry products that may result from coordinating the activities of producers and buyers, it is in the public in-**

terest to establish cooperatives to coordinate the tracking, removal and sale of trees and to set prices to accomplish increased utilization.

(2) It is the intent of sections 1 to 7 of this 2015 Act to displace competition through a regulatory system for the commercial production and marketing of forestry products on nonforest land under a Clackamas County program, referred to in sections 1 to 7 of this 2015 Act as the Clackamas Forestry Product Cooperative Project, to a limited degree and for the period specified in subsection (7) of this section. The regulatory system is intended to grant immunity from federal and state antitrust laws to the Clackamas Forestry Product Cooperative Project parties for the limited purposes of allowing the parties to bargain collectively and to arrive at a negotiated price for forestry products produced on nonforest land within Clackamas County.

(3) The activities of any party that comply with the regulatory system described in sections 1 to 7 of this 2015 Act and State Forester rules for carrying out the regulatory system and the Clackamas Forestry Product Cooperative Project may not be considered to be in restraint of trade, a conspiracy or combination or any other unlawful activity in violation of any provision of ORS 646.705 to 646.826 or federal antitrust laws.

(4) The State Forester shall actively supervise the conduct of a party in negotiating tentative prices for forestry products bought and sold as part of the Clackamas Forestry Product Cooperative Project. The State Forester shall actively supervise, and establish procedures and guidelines for, the negotiations between the parties and shall review the tentative prices established by those negotiations. The State Forester must set the prices for forestry products bought and sold as part of the project by formal action before the prices may be implemented. In setting the prices for the forestry products, the State Forester may give consideration to the tentative prices for those forestry products negotiated between the parties. The State Forester must make any adjustments to previously set prices for forestry products by formal action before the adjustments may be implemented.

(5) The State Forester may compel the parties to take whatever action the State Forester considers necessary to:

(a) Ensure that the parties are engaging in conduct that is authorized under sections 1 to 7 of this 2015 Act;

(b) Ensure that the policies of this state are being fulfilled under the Clackamas Forestry Product Cooperative Project; and

(c) Prevent conduct by any of the parties that is not authorized by the regulatory system administered by the State Forester or conduct that, in the opinion of the State Forester, does not advance the interests of this state in carrying out the regulatory system for the Clackamas Forestry Product Cooperative Project.

(6) The State Forester may take any actions the State Forester deems appropriate to resolve disputes between the parties that involve or arise out of the Clackamas Forestry Product Cooperative Project, including but not limited to referring the dispute for mediation, arbitration or hearing.

(7) Except as provided in section 7 of this 2015 Act, for the period prior to July 1, 2019, the Clackamas Forestry Product Cooperative Project shall displace competition regarding the commercial production and marketing of forestry products on nonforest land in those areas of the county where the project is in effect.

(8) The State Forester may designate employees of the State Forestry Department to carry out the responsibility of actively supervising the conduct of the parties, including serving as intermediaries between parties or prospective parties.

(9) The State Forester may adopt rules to carry out the State Forester's authority under sections 1 to 7 of this 2015 Act. The department and the county shall enter into a memorandum of understanding for the county to reimburse the department for the actual costs to the department of providing services for the benefit of the Clackamas Forestry Product

Cooperative Project. Moneys paid by the county as reimbursement shall be deposited in the State Forestry Department Account established under ORS 526.060.

**SECTION 3.** (1) Clackamas County shall establish the Clackamas Forestry Product Cooperative Project as a pilot program. In addition to promoting economic development within Clackamas County, the purpose of the project shall be to develop a program model for use by counties in this state that wish to promote economic development by using cooperatives to provide for the commercial production and marketing of forestry products from nonforest lands. Subject to section 2 of this 2015 Act, Clackamas County may do the following to carry out the pilot program:

(a) Subject to section 4 of this 2015 Act, negotiate and enter into an agreement with persons, cities or other governmental entities willing to commercially produce forestry products as members of the Clackamas Forestry Product Cooperative Project. The agreement must specify the number, type and location of trees covered by the agreement. The State Forester may impose additional requirements for the contents of agreements described in this paragraph.

(b) Negotiate with one or more producers and dealers to establish the price for the forestry products sold through the cooperative. The dealers may negotiate the price for the forestry products through a committee that sets forth the views of the dealers and votes on any issues being negotiated as authorized by this section, including the price for forestry products. However, a person that is both a producer and a dealer may not participate in negotiations under this section.

(2) A tree that is covered by an agreement under subsection (1)(a) of this section must be marked for identification purposes as required by the county.

(3) An agreement under subsection (1)(a) of this section may not be used to alter the supply of buildable land within an urban growth boundary.

(4) If the land on which a tree subject to the Clackamas Forestry Product Cooperative Project is located is sold, the tree shall continue to be a tree subject to the Clackamas Forestry Product Cooperative Project unless:

(a) The new owner of the land removes the tree from the project; or

(b) The county project coordinator determines that the tree is not being maintained as required by the project.

**SECTION 4.** (1) The Clackamas Forestry Product Cooperative Project shall operate:

(a) In all areas of Clackamas County that are outside of city limits;

(b) On residential or commercial properties, or properties owned by nonprofit entities, located in a city that elects to allow the project within the city limits; and

(c) On lands owned by any governmental entity that elects to participate in the project.

(2) An election by a city or other governmental entity to allow or participate in the project must be by formal action of the governing body for the city or other governmental entity.

(3) Clackamas County may undertake efforts to inform cities and other governmental entities about the Clackamas Forestry Product Cooperative Project and the opportunities for the cities and governmental entities to elect to allow or participate in the project. The State Forester shall undertake to encourage cities and governmental entities located within urban growth boundaries to allow or participate in the project.

(4) The State Forester, county and a city may work jointly to adopt components of the Clackamas Forestry Product Cooperative Project within city limits. A city electing to allow the project may specify how the project is to be administered within the city limits, including but not limited to specifications regarding land use zoning requirements, maintenance requirements and the issuance of tree removal permits for harvesting of trees enrolled in the program. Any specifications regarding how the project is to be administered within a city must be set forth in a memorandum of understanding between the county and the city. A memorandum of understanding described in this subsection may not take effect unless re-

viewed and approved by the State Forester. This subsection does not authorize a city to regulate the project on lands owned by a governmental entity described in subsection (1)(c) of this section that are located inside city limits.

(5) If a change in city limits causes a property that is participating in the Clackamas Forestry Product Cooperative Project to become located inside city limits, notwithstanding any other provision of this section, the property may continue to participate in the project under the terms of the agreement described in section 3 (1)(a) of this 2015 Act for that property and the terms of any annexation agreement between the city and the owner of that property.

(6) Except as provided in subsections (4) and (7) this section, a local government may not enforce an ordinance to require or prohibit the removal of a tree that is subject to the Clackamas Forestry Product Cooperative Project. This subsection does not prohibit a local government from:

(a) Enforcing a county ordinance approved by the State Forester for regulating trees subject to the Clackamas Forestry Product Cooperative Project or regulating land on which a tree that is subject to the project is located;

(b) Enforcing a county ordinance adopted to implement comprehensive plan policies developed to address statewide land use goals;

(c) Enforcing a local ordinance regulating a tree that is removed from the Clackamas Forestry Product Cooperative Project;

(d) Exercising the power of eminent domain to acquire fee title to the land on which a tree that is subject to the Clackamas Forestry Product Cooperative Project is located; or

(e) Acting or requiring action to remedy or mitigate a hazardous condition in a tree that presents an imminent threat of serious harm to persons or property.

(7) Subsection (6) of this section does not prevent the application of a local ordinance to require or prohibit the removal of a tree if the tree becomes subject to the Clackamas Forestry Product Cooperative Project more than five years after the tree is planted.

(8) This section does not require a county project coordinator or the State Forester to consent to the inclusion or continued inclusion of a tree in the Clackamas Forestry Product Cooperative Project.

**SECTION 5.** The county program model that Clackamas County develops through the Clackamas Forestry Product Cooperative Project must include, but need not be limited to:

(1) A training manual to guide counties in establishing and administering cooperatives for the commercial production and marketing of forestry products on nonforest lands;

(2) Information identifying tree species best suited for use in western Oregon for producing forestry products;

(3) An Internet website for use by the county, producers and dealers to establish agreements under the program;

(4) Standardized memorandums of understanding setting forth the services provided and the terms of program participation;

(5) Care instructions and identification of best practices for the production of forestry products;

(6) Means for identifying and monitoring the status of trees in the program; and

(7) Materials for the marketing of, and promoting demand for, forestry products.

**SECTION 6.** (1) The governing body of Clackamas County shall appoint an advisory committee to provide the county with recommendations regarding the structure and operation of the Clackamas Forestry Product Cooperative Project in a successful manner, including but not limited to recommendations for addressing the concerns of the local governments and business interests within the county and recommendations regarding the marketing of forestry products.

(2) To the extent practicable, the advisory committee appointed under subsection (1) of this section shall include but need not be limited to representatives from:

- (a) The Association of Oregon Counties;
- (b) The League of Oregon Cities;
- (c) The Department of Transportation;
- (d) A conservation organization;
- (e) The forest products industry;
- (f) The nursery products industry; and
- (g) The Oregon Wood Innovation Center operated by Oregon State University.

**SECTION 7.** The State Forester may terminate the Clackamas Forestry Product Cooperative Project if the State Forester determines that the project is not being conducted in accordance with sections 1 to 7 of this 2015 Act or rules adopted under section 2 of this 2015 Act.

**SECTION 8.** (1) Clackamas County shall report on progress regarding studies and preparation for the Clackamas Forestry Product Cooperative Project described in sections 1 to 7 of this 2015 Act:

- (a) To an interim committee of the Legislative Assembly dealing with economic development during September 2015;
- (b) To the 2016 regular session of the Legislative Assembly;
- (c) To an interim committee of the Legislative Assembly dealing with economic development during September 2016; and
- (d) To the 2017 regular session of the Legislative Assembly.

(2) The reports made under this section must be accompanied by accountings sufficient to establish that expenditures of moneys described in section 9 of this 2015 Act are used solely for the purpose of studying and preparing for the Clackamas Forestry Product Cooperative Project.

(3) The county shall make all reasonable efforts to complete preparations for the Clackamas Forestry Product Cooperative Project no later than June 1, 2017.

**SECTION 9.** In addition to and not in lieu of any other appropriation, there is appropriated to the State Forestry Department, for the biennium beginning July 1, 2015, out of the General Fund, the amount of \$400,000, which may be expended for the purpose of issuing one or more grants to Clackamas County for studying matters regarding, and making preparations for, the Clackamas Forestry Product Cooperative Project.

**SECTION 10.** (1) Sections 1 to 7 of this 2015 Act are repealed January 2, 2023.

(2) Any activities under an agreement entered into as part of the pilot program described in sections 1 to 7 of this 2015 Act must cease on or before the repeal date established in subsection (1) of this section.

**SECTION 11.** This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect July 1, 2015.

**Passed by House July 1, 2015**

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate July 2, 2015**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2015

**Approved:**

.....M,....., 2015

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2015

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Jeanne P. Atkins, Secretary of State