

# Enrolled House Bill 2327

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Representative Susan Morgan)

CHAPTER .....

## AN ACT

Relating to forest fire protection; creating new provisions; amending ORS 477.277, 477.281, 477.295, 477.755, 477.760 and 477.775 and section 11, chapter 685, Oregon Laws 2003; repealing sections 12 and 13, chapter 685, Oregon Laws 2003; and declaring an emergency.

Whereas the Legislative Assembly finds that fire suppression benefits the state by protecting public safety, by maintaining forestland in a condition that can generate forest products, jobs, revenue, a stable tax base and other economic benefits and by helping to maintain clean water, clean air, wildlife habitat, recreational opportunities and other environmental and social benefits; and

Whereas the Legislative Assembly finds that members of the general public cause a substantial portion of fires that occur on protected forestlands; and

Whereas the Legislative Assembly finds that it is far better to prevent fires or to suppress them when the fires are small rather than to allow the occurrence of large fires; and

Whereas the Legislative Assembly finds that it is fiscally inefficient to budget forest protection district resources at a worst-case level for every fire season, and it is sometimes highly beneficial to provide additional resources for enhanced initial fire response on the basis of predicted severity or in response to resource availability shortage; now, therefore,

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

**SECTION 1.** Section 2 of this 2005 Act is added to and made a part of ORS chapter 477.

**SECTION 2.** (1) As part of the preparation of the budget forms submitted to the Oregon Department of Administrative Services pursuant to ORS 291.208 for the State Forestry Department, the State Forester shall prepare, in addition to any amounts budgeted for forest protection districts pursuant to ORS 477.205 to 477.281, a budget request for a General Fund appropriation that may be used for any or all of the following:

- (a) Providing funds for the purchase of insurance under ORS 477.775.
- (b) Placement of centrally managed fire suppression resources for statewide use.
- (c) Acquisition of fast-mobilizing, short-term contingency resources to be used based on predictions of unusually severe fire weather, widespread lightning events or serious resource shortage due to a heavy fire season.
- (d) Enhancement of forest protection district resources in limited cases where land productivity or other economic factors seriously limit the protection district's ability to provide adequate funding to meet performance standards.

(2) The State Forester shall utilize critical discretion in the expenditure of the funds provided to the State Forestry Department pursuant to the separate budget request required under subsection (1) of this section.

(3) The State Forester shall report to the Emergency Board, each year, after the close of the fire season, on:

- (a) The nature and severity of the fire season;
- (b) The moneys expended on fire suppression;
- (c) The rationale for the expenditures; and
- (d) The balance remaining from the biennial appropriation.

**SECTION 3.** Section 4 of this 2005 Act is added to and made a part of ORS 477.064 to 477.120.

**SECTION 4.** (1) The State Forester, or any agency or organization with responsibility under this chapter to suppress fires, may not prohibit an owner or the owner's agent from suppressing a fire occurring on the owner's property or that poses a threat to the owner's property.

(2) Notwithstanding subsection (1) of this section, the forester, agency or organization may prohibit an owner or the owner's agent from suppressing a fire if the owner or agent conducts the action in a manner that the forester, agency or organization reasonably determines is likely to increase the risk of injury or damage to the personnel or equipment of the forester, agency or organization.

**SECTION 5.** Section 6 of this 2005 Act is added to and made a part of ORS 477.205 to 477.281.

**SECTION 6.** Subject to the forest patrol assessment limitations set forth in ORS 477.230:

(1) Actual costs incurred by the forester in the prevention and suppression of fire on grazing land or timberland located within a forest protection district, in excess of the amount budgeted as required by ORS 477.230, but not including those costs eligible for equalization by the Oregon Forest Land Protection Fund, shall be, without regard to proceedings for the collection of the costs:

- (a) Included in the budget for the next fiscal year; and
- (b) Levied and assessed against the grazing land or timberland in the district.

(2) Budgeted amounts not expended may be carried forward as a credit to the assessment rate for the ensuing year.

**SECTION 7.** ORS 477.277, as amended by section 6, chapter 685, Oregon Laws 2003, is amended to read:

477.277. (1) In addition to any other assessment prescribed by ORS 477.205 to 477.281, in any fiscal year in which the Emergency Fire Cost Committee determines *[that the reserve base of the]* pursuant to ORS 477.760 that the unencumbered balance of the Oregon Forest Land Protection Fund is less than *[\$15]* \$22.5 million, a surcharge shall be levied and assessed in the amount of \$38 for each improved lot or parcel, except as provided in ORS 477.760, to defray the increased cost of fire suppression on forestland that is caused by the existence of the improvements.

(2) All surcharge moneys collected pursuant to this section shall be paid into the Oregon Forest Land Protection Fund.

(3) If an owner of forestland files a forest protection plan with the forester which is approved by the State Board of Forestry under ORS 477.210 (2), the owner shall not be required to pay the surcharge levied under subsection (1) of this section.

(4) As used in this section, a lot or parcel is "improved" if it is indicated as improved in the county assessor's property classification files or if a manufactured dwelling is sited on the lot or parcel.

**SECTION 8.** ORS 477.281, as amended by section 7, chapter 685, Oregon Laws 2003, is amended to read:

477.281. (1) The obligation of an owner of timberland or grazing land for payment of assessments and taxes for fire protection of forestland is limited to:

- (a) The payment of moneys pursuant to ORS 321.015 (2), 477.277, 477.295, 477.760 (4) and 477.880 to maintain the Oregon Forest Land Protection Fund *[reserve base at \$15 million]*; and
- (b) The payment of forest protection district assessments pursuant to ORS 477.205 to 477.281.

(2) As used in this section, “obligation of an owner of timberland or grazing land for payment of assessments and taxes for fire protection of forestland” does not include the duties or obligations of the owner under ORS 477.066, 477.068 or 477.120 or the obligations of an owner of land included in a rural fire protection district pursuant to ORS 478.010.

**SECTION 9.** ORS 477.295 is amended to read:

477.295. (1) For purposes of making the levy and assessment of costs against forestland under ORS 477.270, the minimum cost to provide fire protection or suppression for any lot or parcel of real property separately assessed for ad valorem taxes or other taxes provided by law in lieu thereof, on the current assessment roll shall be not less than \$18, except as provided in ORS 477.760. Three dollars of each minimum assessment shall be paid into the Oregon Forest Land Protection Fund. Otherwise, such assessments shall be determined under ORS 477.230 and 477.270.

(2) In any fiscal year in which the Emergency Fire Cost Committee determines [*the reserve base*] **pursuant to ORS 477.760 that the unencumbered balance** of the Oregon Forest Land Protection Fund [*to be*] **has:**

**(a) Increased to an amount:**

**(A) More than \$22.5 million but less than or equal to \$30 million**, the minimum assessment referred to in subsection (1) of this section shall be [*\$15*] **\$16.50** for each lot or parcel [*and such amount shall be treated in the same manner as assessments under ORS 477.230 and 477.270*]. **Of that amount, \$1.50 of each minimum assessment shall be paid into the Oregon Forest Land Protection Fund.**

**(B) More than \$30 million, the minimum assessment referred to in subsection (1) of this section shall be \$15 for each lot or parcel. This amount shall be treated in the same manner as assessments under ORS 477.230 and 477.270.**

**(b) Decreased to an amount that is at or below \$22.5 million, the minimum assessment referred to in subsection (1) of this section shall be \$18 for each lot or parcel. This amount shall be treated in the same manner as assessments under subsection (1) of this section.**

(3) Upon application to the forester under subsection (4) of this section, contiguous lots held under identical ownership shall be considered as one combined lot for purposes of subsection (1) of this section, except that the combined lot shall not include:

(a) A lot on which a structure has been placed or improvements made for the purpose of erecting any temporary or permanent structure;

(b) A lot that is in a subdivision containing lots that have been or are being offered for sale; or

(c) A lot that is not designated forest or agricultural land for the purpose of land use or special tax assessment purposes.

(4) To qualify under subsection (3) of this section, an owner of forestland shall make application to the forester no later than April 15 of the fiscal year preceding each fiscal year for which the owner desires the land to be assessed under subsection (3) of this section. The application shall be on a form prescribed by the State Forester. A fee of \$25 per combined lot shall be paid to the forester at the time of first application for the combined lot. An additional fee of \$25 per combined lot shall be paid to the forester at the time of subsequent application, if an application for the combined lot was not made for the previous fiscal year.

(5) The State Board of Forestry may adopt rules for the administration of the provisions of subsections (3) and (4) of this section.

(6) For the purposes of this section, “lot” and “subdivision” have the meanings given those terms in ORS 92.010.

**SECTION 10.** ORS 477.295, as amended by section 8, chapter 685, Oregon Laws 2003, is amended to read:

477.295. (1) For purposes of making the levy and assessment of costs against forestland under ORS 477.270, the minimum cost to provide fire protection or suppression for any lot or parcel of real property separately assessed for ad valorem taxes or other taxes provided by law in lieu thereof, on the current assessment roll shall be not less than \$18, except as provided in ORS 477.760. Three

dollars of each minimum assessment shall be paid into the Oregon Forest Land Protection Fund. Otherwise, such assessments shall be determined under ORS 477.230 and 477.270.

(2) In any fiscal year in which the Emergency Fire Cost Committee determines *[the reserve base]* **pursuant to ORS 477.760 that the unencumbered balance** of the Oregon Forest Land Protection Fund *[to be]* **has:**

**(a) Increased to an amount:**

**(A) More than *[\$15]* \$22.5 million but less than or equal to \$30 million**, the minimum assessment referred to in subsection (1) of this section shall be *[\$15]* **\$16.50** for each lot or parcel *[and such amount shall be treated in the same manner as assessments under ORS 477.230 and 477.270]*. **Of that amount, \$1.50 of each minimum assessment shall be paid into the Oregon Forest Land Protection Fund.**

**(B) More than \$30 million, the minimum assessment referred to in subsection (1) of this section shall be \$15 for each lot or parcel. This amount shall be treated in the same manner as assessments under ORS 477.230 and 477.270.**

**(b) Decreased to an amount that is at or below \$22.5 million, the minimum assessment referred to in subsection (1) of this section shall be \$18 for each lot or parcel. This amount shall be treated in the same manner as assessments under subsection (1) of this section.**

(3) Upon application to the forester under subsection (4) of this section, contiguous lots held under identical ownership shall be considered as one combined lot for purposes of subsection (1) of this section, except that the combined lot shall not include:

(a) A lot on which a structure has been placed or improvements made for the purpose of erecting any temporary or permanent structure;

(b) A lot that is in a subdivision containing lots that have been or are being offered for sale; or

(c) A lot that is not designated forest or agricultural land for the purpose of land use or special tax assessment purposes.

(4) To qualify under subsection (3) of this section, an owner of forestland shall make application to the forester no later than April 15 of the fiscal year preceding each fiscal year for which the owner desires the land to be assessed under subsection (3) of this section. The application shall be on a form prescribed by the State Forester. A fee of \$25 per combined lot shall be paid to the forester at the time of first application for the combined lot. An additional fee of \$25 per combined lot shall be paid to the forester at the time of subsequent application, if an application for the combined lot was not made for the previous fiscal year.

(5) The State Board of Forestry may adopt rules for the administration of the provisions of subsections (3) and (4) of this section.

(6) For the purposes of this section, "lot" and "subdivision" have the meanings given those terms in ORS 92.010.

**SECTION 11.** ORS 477.755 is amended to read:

**477.755. (1)** Notwithstanding ORS 291.238, the moneys in the Oregon Forest Land Protection Fund are appropriated continuously to the Emergency Fire Cost Committee and shall be used for equalizing emergency fire suppression costs for safeguarding forestland in any forest protection district, and for necessary administrative expenses. However, such administrative expenses may not exceed the limit authorized by the Legislative Assembly each biennium.

**(2)** Notwithstanding any other provision of law, the annual expenditure from the Oregon Forest Land Protection Fund from revenues received from ORS 321.015 (2), 477.277 (1), 477.295 (1) **and** (2), 477.750 (1) and (2), 477.760 (4) and 477.880 (2) may not exceed \$15 million.

**(3) As used in this section, "annual expenditure" means the expenses of the Oregon Forest Land Protection Fund obligated in any 12-month period designated by the Emergency Fire Cost Committee by rule that corresponds to the policy period of any insurance for emergency fire costs.**

**SECTION 12.** ORS 477.755, as amended by section 9, chapter 685, Oregon Laws 2003, is amended to read:

477.755. (1) Notwithstanding ORS 291.238, the moneys in the Oregon Forest Land Protection Fund are appropriated continuously to the Emergency Fire Cost Committee and shall be used for equalizing emergency fire suppression costs for safeguarding forestland in any forest protection district, and for necessary administrative expenses. However, such administrative expenses may not exceed the limit authorized by the Legislative Assembly each biennium.

(2) Notwithstanding any other provision of law, the annual expenditure from the Oregon Forest Land Protection Fund from revenues received from ORS 321.015 (2), 477.277 (1), 477.295 (1) and (2), 477.750 (1) and (2), 477.760 (4) and 477.880 (2) may not exceed \$10 million.

(3) **As used in this section, "annual expenditure" means the expenses of the Oregon Forest Land Protection Fund obligated in any 12-month period designated by the Emergency Fire Cost Committee by rule that corresponds to the policy period of any insurance for emergency fire costs.**

**SECTION 13.** ORS 477.760 is amended to read:

477.760. (1) The reserve base of the Oregon Forest Land Protection Fund is \$22.5 million. On or about the last day of February of each year the Emergency Fire Cost Committee shall meet and determine the unencumbered balance of the fund as of the preceding February 16.

(2) In order to maintain the reserve base of the fund at \$22.5 million, the Emergency Fire Cost Committee may request and the State Treasurer may approve transfers to the fund in accordance with ORS 293.205 to 293.225, if the moneys in this fund fall below the reserve base, whether or not there are sufficient moneys in the fund to pay the obligations of the fund. Repayment of any such transfers shall be made from moneys paid into the fund pursuant to ORS 321.015 (2), 477.277 and 477.880 and from such other moneys as may be credited to the fund therefor.

(3) If the committee determines that the moneys in the fund exceed:

(a) The reserve base, and that no repayment obligations are outstanding from transfers made pursuant to subsection (2) of this section, then the **Department of Revenue shall reduce the taxes described in ORS 321.015 (2) [shall not be collected for the following calendar year, and the assessments described in ORS 477.880 shall not be levied for the following fiscal year.] by 50 percent for the following calendar year and the surcharge for each improved lot or parcel described in ORS 477.277 and the assessments described in ORS 477.880 shall be reduced by 50 percent for the following fiscal year.**

(b) **\$30 million, and that no repayment obligations are outstanding from transfers made pursuant to subsection (2) of this section, then the Department of Revenue may not collect the taxes described in ORS 321.015 (2) for the following calendar year and the surcharge for each improved lot or parcel described in ORS 477.277 and the assessments described in ORS 477.880 may not be collected until the calendar year or fiscal year following the determination of the committee that the unencumbered balance in the fund is less than or equal to \$22.5 million.**

(4)(a) Notwithstanding any other provision of law, if the funds referred to in subsection (2) of this section are inadequate to cover repayment of transfers from the State Treasurer or from other sources, the State Forester shall increase the following taxes, assessments and charges in an amount adequate to [assure] **ensure** repayment of the transfers, and any interest accrued thereon, allowing for contingencies in valuation, assessment and collection:

(A) The harvest tax referred to in ORS 321.015 (2).

(B) The surcharge on developed lots referred to in ORS 477.277.

(C) The minimum assessment referred to in ORS 477.295.

(D) The acreage assessments referred to in ORS 477.880 (2).

(b) The increases to taxes, assessments and charges shall be apportioned based upon the proportionate levels of revenues received from each source by the Oregon Forest Land Protection Fund. Any such increases shall be computed on or before January 1 of each year, and shall be based upon revenues received during the previous four quarters. Any such increases shall be made in the appropriate calendar or fiscal year following that in which the requested transfers from the State Treasurer or from other sources are made.

**SECTION 14.** ORS 477.760, as amended by section 10, chapter 685, Oregon Laws 2003, is amended to read:

477.760. (1) The reserve base of the Oregon Forest Land Protection Fund is [~~\$15~~] **\$22.5** million. On or about the last day of February of each year the Emergency Fire Cost Committee shall meet and determine the unencumbered balance of the fund as of the preceding February 16.

(2) In order to maintain the reserve base of the fund at [~~\$15~~] **\$22.5** million, the Emergency Fire Cost Committee may request and the State Treasurer may approve transfers to the fund in accordance with ORS 293.205 to 293.225, if the moneys in this fund fall below the reserve base, whether or not there are sufficient moneys in the fund to pay the obligations of the fund. Repayment of any such transfers shall be made from moneys paid into the fund pursuant to ORS 321.015 (2), 477.277 and 477.880 and from such other moneys as may be credited to the fund therefor.

(3) If the committee determines that the moneys in the fund exceed:

(a) The reserve base, and that no repayment obligations are outstanding from transfers made pursuant to subsection (2) of this section, then the **Department of Revenue shall reduce the taxes** described in ORS 321.015 (2) [~~shall not be collected for the following calendar year, and the assessments described in ORS 477.880 shall not be levied for the following fiscal year.~~] **by 50 percent for the following calendar year and the surcharge for each improved lot or parcel described in ORS 477.277 and the assessments described in ORS 477.880 shall be reduced by 50 percent for the following fiscal year.**

(b) **\$30 million, and that no repayment obligations are outstanding from transfers made pursuant to subsection (2) of this section, then the Department of Revenue may not collect the taxes described in ORS 321.015 (2) for the following calendar year and the surcharge for each improved lot or parcel described in ORS 477.277 and the assessments described in ORS 477.880 may not be collected until the calendar year or fiscal year following the determination of the committee that the unencumbered balance in the fund is less than or equal to \$22.5 million.**

(4)(a) Notwithstanding any other provision of law, if the funds referred to in subsection (2) of this section are inadequate to cover repayment of transfers from the State Treasurer or from other sources, the State Forester shall increase the following taxes, assessments and charges in an amount adequate to [~~assure~~] **ensure** repayment of the transfers, and any interest accrued thereon, allowing for contingencies in valuation, assessment and collection:

(A) The harvest tax referred to in ORS 321.015 (2).

(B) The surcharge on developed lots referred to in ORS 477.277.

(C) The minimum assessment referred to in ORS 477.295.

(D) The acreage assessments referred to in ORS 477.880 (2).

(b) The increases to taxes, assessments and charges shall be apportioned based upon the proportionate levels of revenues received from each source by the Oregon Forest Land Protection Fund. Any such increases shall be computed on or before January 1 of each year, and shall be based upon revenues received during the previous four quarters. Any such increases shall be made in the appropriate calendar or fiscal year following that in which the requested transfers from the State Treasurer or from other sources are made.

**SECTION 15.** ORS 477.775 is amended to read:

477.775. (1) **Prior to February 1 of each year, the Emergency Fire Cost Committee and the forester shall consult regarding the purchase of emergency fire suppression costs insurance and the level of coverage to purchase for the fire season of that year.**

(2) **In determining whether the purchase of insurance is advisable, the forester and the committee shall consider:**

(a) **The cost, coverage and deductible of insurance available from private insurance carriers;**

(b) **The funding available for fire suppression from the Oregon Forest Land Protection Fund and other sources;**

(c) **The current condition of forests;**

- (d) Long-term weather predictions;
- (e) Available fire fighting resources; and
- (f) Available funds for the purchase of insurance.

(3) If the *[Emergency Fire Cost]* committee and the forester agree to purchase insurance, the forester shall purchase insurance through the Oregon Department of Administrative Services to cover any lawful expense incurred by the State *[Forester]* **Forestry Department**, or contractors or cooperators, that is payable by the Oregon Forest Land Protection Fund. *[Such]* The insurance may be obtained through negotiation or competitive bids, whichever is in the best interest of the state, its contractors and cooperators.

(4) **The Oregon Forest Land Protection Fund may not be charged for payment of more than one-half of any premium for *[such]* the insurance *[shall be paid from the Oregon Forest Land Protection Fund]*.**

**SECTION 16. Sections 12 and 13, chapter 685, Oregon Laws 2003, are repealed.**

**SECTION 17.** Section 11, chapter 685, Oregon Laws 2003, is amended to read:

**Sec. 11.** *[(1) The amendments to ORS 477.277, 477.281, 477.295 and 477.760 by sections 6, 7, 8 and 10 of this 2003 Act become operative on January 2, 2006.]*

*[(2)]* The amendments to ORS 477.755 by section 9, **chapter 685, Oregon Laws 2003, and section 12 of this 2005 Act** *[of this 2003 Act]* become operative July 1, *[2005]* **2007**.

**SECTION 18. (1) The State Forestry Department shall, from moneys in the Oregon Forest Land Protection Fund, reimburse the General Fund without interest, in an amount equal to one-half of the amount from the General Fund that was used to pay the premium for emergency fire suppression costs insurance for the period from April 1, 2005, to March 31, 2006.**

(2) The moneys used to reimburse the General Fund shall be considered as a budget item on which a limitation is otherwise fixed by law and shall be in addition to any specific biennial appropriations or amounts authorized to be expended from continuously appropriated moneys for any biennial period.

**SECTION 19.** This 2005 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect July 1, 2005.

**Passed by House June 30, 2005**

**Repassed by House August 2, 2005**

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Chief Clerk of House

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Speaker of House

**Passed by Senate August 1, 2005**

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President of Senate

**Received by Governor:**

.....M,....., 2005

**Approved:**

.....M,....., 2005

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Governor

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

.....M,....., 2005

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Secretary of State