

A-Engrossed
Senate Bill 786

Ordered by the Senate June 17
Including Senate Amendments dated June 17

Sponsored by Senator ATKINSON; Senator WINTERS, Representatives FLORES, KITTS, OLSON, WHISNANT (at the request of Oregon Association of Nurseries)

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.

[Provides for state nursery production of forest seedlings to cease on or before January 2, 2010.]
Authorizes formation of forest seedling grower cooperative and exempts cooperative and members from antitrust laws. *[Requires State Board of Forestry to forecast demand for forest seedlings and allocate production of forest seedlings among cooperative members to meet forecasted demand.]*

Creates regulatory program for members of forest seedling cooperative. Requires surcharge on forest seedlings grown under **State Board of Forestry** allocation. Continuously appropriates moneys from surcharge for use by board and State Forester in carrying out program.

[Authorizes and directs use of property if State Forester and board operate property formerly used for state forest seedling nursery.]

Allows forester and board to use means in addition to, or instead of, operating state forest nursery to secure and sell forest tree seedlings.

A BILL FOR AN ACT

1
2 Relating to forest seedlings; creating new provisions; amending ORS 526.235 and 526.470; and ap-
3 propriating money.

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

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

6 (1) **Nonindustrial private forests make a vital contribution to Oregon by providing jobs,**
7 **products, an expanded tax base and other social and economic benefits.**

8 (2) **Providing a source of forest tree seedlings to owners of nonindustrial private forests**
9 **is essential to securing the benefits described in subsection (1) of this section.**

10 **SECTION 2. The Legislative Assembly intends that section 3 of this 2005 Act and the**
11 **amendments to ORS 526.235 by section 4 of this 2005 Act authorize the displacement of**
12 **competition in the forest tree seedling industry to a limited degree. The regulatory program**
13 **of the State Forester described in section 3 of this 2005 Act is intended to grant immunity**
14 **from state and federal antitrust laws to a cooperative and its members that enter into an**
15 **agreement with the forester or the State Board of Forestry for the members to produce**
16 **nonindustrial private forest tree seedlings for the forester and the board. The activities that**
17 **any person performs in compliance with section 3 of this 2005 Act may not be considered in**
18 **restraint of trade, a conspiracy or combination or any other unlawful activity in violation**
19 **of ORS 646.705 to 646.805 or federal antitrust laws.**

20 **SECTION 3. (1) As used in this section:**

21 (a) **“Cooperative” means a cooperative of forest tree seedling growers formed under ORS**
22 **chapter 62 for the purpose of allocating among those growers agreements to grow forest tree**

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 seedlings under this section.

2 (b) "Member" means a grower who qualifies and is accepted for membership in the co-
3 operative.

4 (2) The State Forester and the State Board of Forestry may secure forest tree seedlings
5 for the reforestation of forestlands by means that include, but need not be limited to, en-
6 tering into agreements with a cooperative to allocate among the members of the cooperative
7 the production of forest tree seedlings for the forester and the board in amounts, types and
8 species specified by the board.

9 (3) The forester shall actively supervise the conduct of the cooperative and members in
10 carrying out agreements described in subsection (2) of this section to ensure that the activ-
11 ities of the cooperative and members are consistent with the provision of a reasonably
12 priced, adequate and reliable source of high-quality forest tree seedlings. The forester may
13 inspect during reasonable hours any facility or land used by a member to produce forest tree
14 seedlings for the forester and the board. The forester may examine, test and take samples
15 of forest tree seedlings being produced by the member for the forester and the board.

16 (4) The forester may assess a charge on forest tree seedlings grown by a member under
17 a production allocation. Any charges collected under this subsection shall be deposited in the
18 State Forestry Department Account and are continuously appropriated to the forester for
19 purposes of carrying out the duties of the forester under this section.

20 **SECTION 4.** ORS 526.235 is amended to read:

21 526.235. (1) A state forest nursery may be operated by the forester and the State Board of
22 Forestry to provide forest tree seedlings for the reforestation of forestland. [*Such*] **The** nursery
23 program [*is to*] **may** provide for the growth, care and maintenance of nursery stock and for the sale
24 of such stock to private, state and other public owners of forestland.

25 (2) **The forester and the board may use means in addition to, or instead of, operating a**
26 **state forest nursery under subsection (1) of this section to secure forest tree seedlings and**
27 **may sell those forest tree seedlings to private, state and other public owners of forestland.**
28 **The means of securing forest tree seedlings may include, but need not be limited to:**

29 (a) **Contracting with private nurseries to grow forest tree seedlings;**

30 (b) **Allocating all or part of forest tree seedling production for the forester and the board**
31 **to a cooperative of private growers under section 3 of this 2005 Act; and**

32 (c) **Leasing or otherwise making state nursery property available for operation by private**
33 **growers of forest tree seedlings.**

34 [(2)] (3) Each year the forester shall determine the costs of nursery operation **and of securing**
35 **forest tree seedlings under subsection (2) of this section** and shall offer nursery stock **or oth-**
36 **erwise secured forest tree seedlings** for sale to forest owners at prices that will recover actual
37 costs.

38 [(3)] (4) All revenues derived from the [*operation of the forest nursery*] **selling of nursery stock**
39 **and otherwise secured forest tree seedlings** shall be credited to the State Forestry Department
40 Account.

41 [(4)] (5) Notwithstanding ORS 291.238, the moneys credited to the State Forestry Department
42 Account under subsection [(3)] (4) of this section[,] shall be continuously available on a revolving
43 basis exclusively for forest nursery purposes **or for the purpose of securing forest tree**
44 **seedlings.**

45 **SECTION 5.** ORS 526.470 is amended to read:

1 526.470. (1) A state forest tree seed bank may be operated by the State Forester and the State
2 Board of Forestry to provide forest tree seed for the raising of forest tree seedlings suitable for
3 reforestation. Such tree seed bank is to provide for the purchase, collection, storage, care and
4 maintenance of forest tree seed and for the sale of such tree seed to private, state and other public
5 owners of forest nurseries or forestland.

6 (2) Each year the State Forester shall determine the costs of tree seed bank operation and shall
7 offer tree seed for sale to forest or nursery owners at prices that will recover actual costs.

8 (3) All revenues derived from the operation of the tree seed bank shall be credited to the State
9 Forestry Department Account.

10 (4) Notwithstanding ORS 291.328, the moneys credited to the State Forestry Department Ac-
11 count under subsection (3) of this section shall be continuously available on a revolving basis ex-
12 clusively for forest nursery purposes **or for the purpose of securing forest tree seedlings.**

13 (5) The State Forester shall keep a record of all moneys deposited in the State Forestry De-
14 partment Account for forest nursery purposes **or for the purpose of securing forest tree**
15 **seedlings.** The record shall indicate by separate cumulative accounts the source from which the
16 moneys are derived and the individual activity or program against which each withdrawal is
17 charged.

18 **SECTION 6. The State Forester shall report to an interim committee of the Legislative**
19 **Assembly dealing with natural resources no later than October 1, 2008. The report shall**
20 **contain an assessment of the means used by the forester and the State Board of Forestry**
21 **to secure forest tree seedlings and be accompanied by any recommendations of the forester**
22 **or the board for legislation regarding the securing of forest tree seedlings.**

23