

Enrolled Senate Bill 786

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

CHAPTER

AN ACT

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

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

SECTION 1. The Legislative Assembly finds and declares that:

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

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

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

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

(a) "Cooperative" means a cooperative of forest tree seedling growers formed under ORS chapter 62 for the purpose of allocating among those growers agreements to grow forest tree seedlings under this section.

(b) "Member" means a grower who qualifies and is accepted for membership in the cooperative.

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

(3) The forester shall actively supervise the conduct of the cooperative and members in carrying out agreements described in subsection (2) of this section to ensure that the activities of the cooperative and members are consistent with the provision of a reasonably priced, adequate and reliable source of high-quality forest tree seedlings. The forester may

inspect during reasonable hours any facility or land used by a member to produce forest tree seedlings for the forester and the board. The forester may examine, test and take samples of forest tree seedlings being produced by the member for the forester and the board.

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

SECTION 4. ORS 526.235 is amended to read:

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

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

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

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

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

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

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

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

SECTION 5. ORS 526.470 is amended to read:

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

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

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

(4) Notwithstanding ORS 291.328, the moneys credited to the State Forestry Department Account under subsection (3) of this section shall be continuously available on a revolving basis exclusively for forest nursery purposes **or for the purpose of securing forest tree seedlings.**

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

SECTION 6. **The State Forester shall report to an interim committee of the Legislative Assembly dealing with natural resources no later than October 1, 2008. The report shall**

contain an assessment of the means used by the forester and the State Board of Forestry to secure forest tree seedlings and be accompanied by any recommendations of the forester or the board for legislation regarding the securing of forest tree seedlings.

Passed by Senate June 21, 2005

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Secretary of Senate

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President of Senate

Passed by House June 30, 2005

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Speaker of House

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