

# Senate Bill 786

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 **as introduced**.

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 board 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.

## A BILL FOR AN ACT

1  
2 Relating to forest seedlings; creating new provisions; amending ORS 336.015, 526.166 and 526.470;  
3 repealing ORS 526.235 and 526.245; and appropriating money.

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

5 **SECTION 1. The Legislative Assembly intends that section 2 of this 2005 Act displace**  
6 **competition with a regulatory program in the forest seedling industry to a limited degree.**  
7 **The regulatory program is intended to grant immunity from state and federal antitrust laws**  
8 **to a cooperative and its members entering into an agreement with the State Board of**  
9 **Forestry for the production of amounts and species of nonindustrial private forest seedlings**  
10 **specified by the board. The activities of any person that complies with section 2 of this 2005**  
11 **Act may not be considered in restraint of trade, a conspiracy or combination or any other**  
12 **unlawful activity in violation of ORS 646.705 to 646.805 or federal antitrust laws.**

13 **SECTION 2. (1) As used in this section:**

14 (a) **"Cooperative" means a cooperative of forest seedling growers formed under ORS**  
15 **chapter 62 for the purpose of allocating among those growers agreements to grow the forest**  
16 **seedling demand forecasted by the State Board of Forestry under this section.**

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

19 (2) **The board shall annually prepare a forecast of the demand for forest seedlings on**  
20 **private nonindustrial forestland and determine the number and types of forest seedlings that**  
21 **will need to be grown to accommodate that demand. The board may enter into agreements**  
22 **allocating among the members of the cooperative the production of forest seedlings in**  
23 **amounts, types and species needed to meet the forest seedling demand forecasted by the**  
24 **board.**

25 (3) **The board may enter into agreements with the cooperative or directly with the**  
26 **members. However, if the board intends to make an agreement directly with a member, the**  
27 **board shall first consult with the cooperative and the State Forester regarding the ability**

**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 of that member to fulfill the proposed agreement. The cooperative and the forester are im-  
2 mune from liability for any information concerning the forest seedling growing ability of the  
3 member, or other information reflecting on the ability of the grower to fulfill a proposed  
4 agreement, that is supplied to the board in good faith under this subsection.

5 (4) The forester shall actively supervise the conduct of the cooperative and members to  
6 ensure that the activities of the cooperative and members are consistent with the provision  
7 of a reasonably priced, adequate and reliable source of high-quality forest seedlings. The  
8 forester may inspect during reasonable hours any facility or land used for the production of  
9 forest seedlings by a member who has contracted with the board. The forester may examine,  
10 test and take samples of forest seedlings being produced by the member and may examine  
11 production, inventory and sales records for the purpose of ensuring that the member or the  
12 cooperative fulfills the terms of an agreement.

13 (5) The board shall assess a surcharge on the sale of each forest seedling grown by a  
14 member under a production allocation. The board shall establish the surcharge by rule in  
15 an amount projected to be sufficient to cover the cost of carrying out the duties of the  
16 forester and the board under this section. Surcharges collected under this subsection shall  
17 be deposited in the State Forestry Department Account and are continuously appropriated  
18 to the forester and the board for purposes of carrying out their respective duties under this  
19 section.

20 (6) The forester and the board shall recommend and promote the use of forest seedlings  
21 grown by members. Each member shall act independently as a supplier of forest seedlings,  
22 including but not limited to establishing prices, accepting customer orders, shipping forest  
23 seedlings and establishing warranty policies. However, the cooperative may regulate the  
24 prices charged by members for forest seedlings of a species grown in limited numbers.

25 (7) This section does not prohibit the raising of forest seedlings by growers who are not  
26 members of the cooperative. Except as otherwise provided in this subsection, a member may  
27 grow forest seedlings for sale outside the cooperative system if the production by the grower  
28 exceeds the production allocation that was offered to the member. If the board determines  
29 that demand for a species of forest seedling will be limited, the board may prohibit members  
30 from producing that species of forest seedling other than as allocated to the member.

31 (8) The cooperative is not a state agency. Members are not employees or agents of the  
32 state for any purpose. The bylaws of the cooperative shall provide for the cooperative to  
33 oversee the forest seedling business activities of members, resolve disputes and otherwise  
34 ensure the efficient operation of the cooperative consistent with the public interest. The  
35 governing body shall report to the board on a regular basis as established by the board. The  
36 bylaws of the cooperative shall be designed in a manner that makes membership easy to  
37 obtain and avoids creating undue barriers to entry by new growers. This subsection does not  
38 affect the right of the cooperative to deny membership to a grower whose membership has  
39 previously been terminated under ORS 62.145.

40 **SECTION 3.** (1) The State Forester and the State Board of Forestry may operate a state  
41 nursery property for the purposes described in this section.

42 (2) The forester and the board shall make available for lease the growing fields of any  
43 state nursery property operated by the forester and the board under this section. The board  
44 shall give preference in leasing the fields to leases for the purpose of forest seedling pro-  
45 duction by members of the cooperative described in section 2 of this 2005 Act.

1       **(3) If the forester and the board operate a state nursery property under this section, the**  
2 **board shall maintain and operate a regional cold-storage facility for forest seedlings at the**  
3 **property. The board may use any facilities on the property for other business purposes as**  
4 **determined by the board. Moneys received by the board from business operations under this**  
5 **subsection are not moneys from the lease of property for purposes of ORS 526.194. Moneys**  
6 **derived from business operations under this subsection shall be deposited in the State**  
7 **Forestry Department Account and are continuously appropriated to the forester and the**  
8 **board for the maintenance and operation of state nursery property facilities.**

9       **SECTION 4. (1) Notwithstanding sections 1 to 3 of this 2005 Act and the repeal of ORS**  
10 **526.235 by section 8 of this 2005 Act, the State Forester and the State Board of Forestry may**  
11 **use a state nursery property to continue producing and selling forest seedlings during the**  
12 **period ending January 2, 2010. Production and sale of forest seedlings under this section shall**  
13 **be limited to:**

14       **(a) Completion of the production and sale of forest seedlings being grown at the nursery**  
15 **on the effective date of this 2005 Act; and**

16       **(b) The production and sale of forest seedlings in an amount by which the forecasted**  
17 **demand for forest seedlings under section 2 of this 2005 Act exceeds the number of forest**  
18 **seedlings that members of the cooperative are willing and able to produce.**

19       **(2) If the forester and the board continue to produce and sell forest seedlings during the**  
20 **period ending January 2, 2010, subject to the limitations described in subsection (1) of this**  
21 **section, the forester and the board shall operate the state nursery property, conduct forest**  
22 **seedling sales and deposit moneys in the manner described in ORS 526.235 as set forth in the**  
23 **2003 Edition of Oregon Revised Statutes.**

24       **(3) Notwithstanding section 3 of this 2005 Act, the forester and the board may not make**  
25 **growing fields at a state nursery available for lease during the period ending January 2, 2010,**  
26 **unless the forester and the board determine that forest seedling production from the leased**  
27 **growing fields, in combination with the number of forest seedlings that members of the co-**  
28 **operative described in section 2 of this 2005 Act are willing and able to produce on private**  
29 **lands, will be sufficient to meet the forecasted demand.**

30       **(4) The board shall report to an interim committee of the Legislative Assembly dealing**  
31 **with natural resources no later than October 1, 2008. The report shall contain an assessment**  
32 **of the forest seedling cooperative program and be accompanied by any board recommen-**  
33 **dations for legislation regarding the program.**

34       **SECTION 5. ORS 526.166 is amended to read:**

35       526.166. In addition to any authority otherwise granted by law, the State Board of Forestry may  
36 acquire, by purchase, agreement or donation, real property or any interest therein, including ease-  
37 ments and ways, found necessary by the board for:

38       (1) Rights of way to lands of the state, which lands are under the management or jurisdiction  
39 of the board or forester.

40       (2) Forest patrol sites, administrative sites, [*nursery sites,*] communication sites, construction of  
41 shops, equipment sheds and office buildings.

42       (3) Quarry sites, gravel pits and rights of way for pipelines, communication lines and power  
43 lines.

44       (4) Any other use or purpose necessary in carrying out the powers and duties of the board or  
45 forester. **However, the board may not acquire property for the purpose of creating new state**

1 **nursery sites.**

2 **SECTION 6.** ORS 526.470 is amended to read:

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

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

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

12 [*(4) Notwithstanding ORS 291.328, the moneys credited to the State Forestry Department Account*  
 13 *under subsection (3) of this section shall be continuously available on a revolving basis exclusively for*  
 14 *forest nursery purposes.*]

15 [*(5) The State Forester shall keep a record of all moneys deposited in the State Forestry Depart-*  
 16 *ment Account for forest nursery purposes. The record shall indicate by separate cumulative accounts*  
 17 *the source from which the moneys are derived and the individual activity or program against which*  
 18 *each withdrawal is charged.*]

19 **SECTION 7.** ORS 336.015 is amended to read:

20 336.015. (1) The first full week in April shall be known as Arbor Week. In order that pupils in  
 21 the public schools shall be made better aware of the benefits of the preservation and perpetuation  
 22 of forests and the growing of timber and of the environment, the district school board shall cause  
 23 to be conducted, during school hours, activities which tend to encourage the planting, protection  
 24 and preservation of trees and shrubs and a greater understanding of the environment and means for  
 25 preserving and improving it.

26 (2) The Superintendent of Public Instruction, with the approval of the State Board of Education  
 27 and with the technical assistance of the State Forester, may prescribe and alter a schedule of ac-  
 28 tivities and instruction to be observed during Arbor Week.

29 [*(3) The State Forester or person in charge of the state tree nurseries may release for use by*  
 30 *schools upon application thereof seedlings that would otherwise be destroyed.*]

31 **SECTION 8. ORS 526.235 and 526.245 are repealed.**

32