

Senate Bill 1095

Sponsored by Senator JOHNSON (at the request of Council of Forest Trust Land Counties)

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**.

Specifies that land conveyed by counties to state to be used as forests be held in trust by state. Specifies that counties hold protected interest in land conveyed to state. Requires all exchanges of lands to be approved by governing body of county.

Directs State Forester to manage lands conveyed to state so as to secure greatest permanent value to state and counties.

Directs State Forester to enter into agreements with counties that have conveyed lands to state regarding management and control of lands. Specifies required elements of agreement.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to state forests; creating new provisions; amending ORS 530.030, 530.040 and 530.050; and
3 declaring an emergency.

4 Whereas the purpose of this 2005 Act is to clarify and to memorialize the agreement and
5 understanding between the state and those counties that have, pursuant to ORS chapter 530, con-
6 veyed, transferred or otherwise relinquished title to forestlands to the state; and

7 Whereas the Legislative Assembly finds that statutes were enacted to authorize counties to
8 convey, transfer or otherwise relinquish title to forestlands; and

9 Whereas, pursuant to those statutes, the state encouraged counties to convey, transfer or oth-
10 erwise relinquish title to forestlands in consideration for a percentage of the revenue derived from
11 those lands; and

12 Whereas through the language used in those statutes, the state assured counties that the lands
13 would be used to produce revenue and that a majority of the revenue would be distributed to the
14 counties in which the forestlands were located; and

15 Whereas the relationship between the state and the counties has been in the nature of a con-
16 tract, in which the state owns and has management control of former county lands held in trust for
17 the mutual benefit of the state and counties; and

18 Whereas the state assumed a fiduciary responsibility, in the nature of a trustee, to act in the
19 best interests of the counties; and

20 Whereas the relationship between the counties and the state is defined by statutes codified in
21 ORS chapter 530, by legislation that has modified those statutes through the years, by statutes that
22 relate to the interest of the counties in the forestlands and in agreements made in contemplation
23 of those laws; and

24 Whereas that relationship has been built on consensual dealings between the counties and the
25 state and has created, according to the Oregon Supreme Court, a protected, recognizable interest
26 that can be asserted by the counties; and

27 Whereas the Seventy-second Legislative Assembly, through House Bill 2148, directed \$10 million
28 to be transferred from the State Forestry Department Account to the General Fund for general

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 governmental expenses instead of for use as provided under ORS 530.110; and

2 Whereas in response to House Bill 2148, 15 counties that had conveyed lands to the state pur-
3 suant to ORS 530.010 to 530.040 filed a lawsuit against the state challenging the validity of the bill;
4 and

5 Whereas the state and counties agree that the provisions of this 2005 Act resolve and settle the
6 issues raised by the pending litigation; now, therefore,

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

8 **SECTION 1.** ORS 530.030 is amended to read:

9 530.030. (1) The county court or board of county commissioners of any county may convey to the
10 state for **the state to hold in trust as** state forests any lands [*heretofore or hereafter*] acquired by
11 [*such*] **the** county through foreclosure of tax liens, or otherwise, [*which*] **that** are within the classi-
12 fication of lands authorized to be acquired under ORS 530.010, if the **State Board of Forestry**
13 [*board*] deems such lands necessary or desirable for acquisition, in consideration of the payment to
14 [*such*] **the** county of the percentage of revenue derived from such lands as provided in ORS 530.110.
15 In connection with any such conveyance the [*board*] **State Board of Forestry** shall have authority
16 to make equitable adjustments with any county of accrued delinquent fire patrol liens on lands
17 [*heretofore or hereafter*] acquired by [*such*] **the** county by foreclosure of tax liens.

18 (2) As to such lands acquired by the [*board*] **State Board of Forestry** with title to the timber
19 remaining in the county for a designated period of time, the State Forester may enter into contracts
20 with the county to supervise the removal and sale of such timber and under such contracts the gross
21 proceeds of the sale thereof shall be disposed of as follows:

22 (a) Ten percent of such gross proceeds shall be paid into the State Treasury and credited to the
23 State Forestry Department Account and shall be used exclusively for the purposes and under the
24 limitations set out in ORS 530.110 (1)(a).

25 (b) A percentage of such gross proceeds shall be accepted by the State Forester, pursuant to
26 written contract with the county authority, as compensation for the supervision and management
27 of county-owned timber.[;] The moneys so derived shall be paid into the State Treasury and credited
28 to the State Forestry Department Account and shall be used exclusively for the supervision and
29 management of state forests acquired pursuant to ORS 530.010.

30 **(3) The state shall hold, develop and manage lands conveyed to the state pursuant to this**
31 **section in the manner of a trustee, for the benefit of the county that conveyed the land.**

32 **(4) A county that conveys lands to the state under this section holds a protected, re-**
33 **recognizable interest in the conveyed lands.**

34 **SECTION 2.** ORS 530.040 is amended to read:

35 530.040. (1) It is desirable that lands acquired under the provisions of ORS 530.010 [*shall*] be
36 consolidated in areas wherever possible through exchanges of land. It is recognized that the man-
37 agement of state forests will be more economically feasible through such consolidation.

38 (2) In order to accomplish the objectives of subsection (1) of this section, the **State Board of**
39 **Forestry** may exchange any land acquired under the provisions of ORS 530.010, or may exchange
40 the timber on such land, for land of approximately equal aggregate value, situated in the same
41 county **or in another county**, when [*such*] **the** exchange is in furtherance of the purposes of ORS
42 530.010[; *provided, however, the board may exchange land or timber situated in one county or counties*
43 *for land situated in another county or counties if such exchange is first approved by the county court*
44 *or board of county commissioners of each county involved; and provided further, that either*].

45 **(3) Any party to [any such] an exchange may make reservations of easements, rights of use and**

1 other interests and rights. Under the authority granted in this section the board may provide or
 2 receive, in addition to land to be exchanged, a monetary consideration where necessary to make the
 3 values comply with this [subsection] **section.**

4 [(3)] (4) Before making any [such] exchange the board shall hold a hearing [thereon] **on the**
 5 **exchange** at the courthouse of the county in which [such] **the** lands are situated and shall give
 6 notice of the time and place [thereof] **of the meeting** by publication in two successive issues of a
 7 newspaper of general circulation published in [such] **the** county. The notice shall contain a de-
 8 scription of the lands to be given and to be received in the proposed exchange.

9 (5) [However, no such exchange shall] **An exchange may not** be made until:

10 (a) The title to the lands to be received has been approved by the Attorney General; **and**

11 (b) **The exchange is first approved by the governing body of each county involved in the**
 12 **exchange.**

13 [(4)] (6) All lands received in exchange [shall] have the same status and [be] **are** subject to the
 14 same provisions of law as the lands given in exchange [therefor], **including the trust obligation**
 15 **specified in ORS 530.030.**

16 **SECTION 3.** ORS 530.050 is amended to read:

17 530.050. Under the authority and direction of the State Board of Forestry except as otherwise
 18 provided for the sale of forest products, the State Forester shall manage the lands acquired pursuant
 19 to ORS 530.010 to 530.040 so as to secure the greatest permanent value of [such] **the** lands to the
 20 state **and to the counties that receive revenue from the lands pursuant to ORS 530.110**, and
 21 to that end may:

22 (1) Protect the lands from fire, disease and insect pests, cooperate with the counties and with
 23 persons owning lands within the state in such protection and enter into all agreements necessary
 24 or convenient therefor.

25 (2) Sell forest products from the lands, and execute mining leases and contracts as provided for
 26 in ORS 273.551.

27 (3) Permit the use of the lands for other purposes, including but not limited to forage and browse
 28 for domestic livestock, fish and wildlife environment, landscape effect, protection against floods and
 29 erosion, recreation, and protection of water supplies when, in the opinion of the board, such use is
 30 not detrimental to the best interest of the state.

31 (4) Grant easements, permits and licenses over, through and across the lands; also, may require
 32 and collect reasonable fees or charges relating to the location and establishment of easements,
 33 permits and licenses granted by the state over such lands, which moneys shall be used for the ex-
 34 penses of such location and establishment. Any moneys derived hereunder shall be placed in the
 35 State Forestry Department Account and used exclusively for such purposes.

36 (5) Require and collect fees or charges for the use of state forest roads, which moneys shall be
 37 used for purposes of maintenance and improvements of such roads. Any moneys derived hereunder
 38 shall be placed in the State Forestry Department Account and used exclusively for such purposes.

39 (6) Reforest the lands and cooperate with the counties, and with persons owning timberlands
 40 within the state, in such reforestation, and make all agreements necessary or convenient therefor.

41 (7) Require such undertakings as in the opinion of the board are necessary or convenient to
 42 secure performance of any contract entered into under the terms of this section, or ORS 273.551.

43 (8) Sell rock, sand, gravel, pumice and other such materials from the lands; such sale may be
 44 negotiated without bidding provided the appraised value of such does not exceed \$2,500.

45 (9) Enter into agreements, each for not more than 10 years duration, for the production of minor

1 forest products.

2 (10) Establish a forestry carbon offset program to market, register, transfer or sell forestry
3 carbon offsets. In establishing the program, the forester may:

4 (a) Execute any contracts or agreements necessary to create opportunities for the creation of
5 forestry carbon offsets; and

6 (b) Negotiate prices that are at, or greater than, fair market value for the transfer or sale of
7 forestry carbon offsets.

8 (11) Do all things and make all rules, not inconsistent with law, necessary or convenient for the
9 management, protection, utilization and conservation of the lands.

10 **SECTION 4. The State Forester shall enter into written agreements with counties, or an**
11 **organization that represents counties, that have conveyed, transferred, exchanged or other-**
12 **wise relinquished ownership and control of lands to the state pursuant to ORS 530.010 to**
13 **530.040 regarding the management and control of the lands. An agreement entered into pur-**
14 **suant to this section shall bind the state and a county to the terms of the agreement and**
15 **shall, at a minimum, contain covenants providing that:**

16 (1) The state, through the State Board of Forestry and the State Forester, may use the
17 revenues derived from the lands acquired from the counties only for the purposes specified
18 in ORS 530.110 on the date of the written agreement;

19 (2) The state is prohibited from selling, conveying, transferring or exchanging any of the
20 land without obtaining the prior approval of the governing body of the county;

21 (3) The agreement may be modified or terminated only with the written approval of the
22 parties to the agreement; and

23 (4) If any portion of the agreement is found to be void, voidable or unenforceable, the
24 remainder of the agreement will continue in force.

25 **SECTION 5. The State Forester shall enter into the agreements specified in section 4 of**
26 **this 2005 Act no later than October 1, 2006.**

27 **SECTION 6. The amendments to ORS 530.030, 530.040 and 530.050 by sections 1 to 3 of this**
28 **2005 Act apply to lands conveyed, transferred or exchanged or for which title was otherwise**
29 **relinquished to the state pursuant to ORS 530.010 to 530.040 before, on or after the effective**
30 **date of this 2005 Act.**

31 **SECTION 7. This 2005 Act being necessary for the immediate preservation of the public**
32 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**
33 **on its passage.**

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