

A-Engrossed
House Bill 2984

Ordered by the House April 24
Including House Amendments dated April 24

Sponsored by Representatives PARRISH, BUEHLER, WITT; Representatives BARKER, BARTON, BOONE, BUCKLEY, DAVIS, DOHERTY, ESQUIVEL, EVANS, FAGAN, GALLEGOS, GOMBERG, GORSEK, HACK, HELM, HUFFMAN, JOHNSON, KENNEMER, KENY-GUYER, KRIEGER, LIVELY, MCKEOWN, MCLAIN, NOSSE, OLSON, READ, REARDON, SMITH WARNER, TAYLOR, WEIDNER, WHITSETT, WILLIAMSON, Senators BAERTSCHIGER JR, BOQUIST, DEVLIN, EDWARDS, GIROD, HANSELL, HASS, JOHNSON, KNOPP, MONROE, OLSEN, RILEY, ROBLAN, SHIELDS, STEINER HAYWARD, THATCHER, THOMSEN, WINTERS

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.

Requires Clackamas County to develop pilot program for forestry products grown on nonforest land in county to be commercially produced and marketed through forestry product cooperative. Exempts pilot program and parties from antitrust laws. Requires State Forester to establish regulatory system for overseeing actions of parties to Clackamas County pilot program. **Ends pilot program displacement of competition on July 1, 2019.** Requires county to develop program model for use by other Oregon counties.

Allocates moneys during biennium beginning July 1, 2015, from Administrative Services Economic Development Fund to Clackamas County as grant for pilot program development. Requires county to make multiple reports on program development progress.

Sunsets pilot program on January 2, _____.
Declares emergency, effective July 1, 2015.

A BILL FOR AN ACT

1
2 Relating to forestry product cooperatives; and declaring an emergency.

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

4 **SECTION 1. As used in sections 1 to 7 of this 2015 Act:**

5 (1) **"Clackamas Forestry Product Cooperative Project"** means the pilot program estab-
6 lished by Clackamas County under section 3 of this 2015 Act for forestry products grown on
7 nonforest land within the county to be commercially produced and marketed through a
8 forestry products cooperative.

9 (2) **"Dealer"** means a person or agent of a person, other than a cooperative, that pur-
10 chases or contracts to purchase forestry products through the Clackamas Forestry Product
11 Cooperative Project.

12 (3) **"Forestland"** means land for which the highest and best use is the growing of forestry
13 products.

14 (4) **"Forestry products":**

15 (a) **Except as provided in paragraph (b) of this subsection, means products from har-**
16 **vested timber.**

17 (b) **Does not mean products from short rotation fiber grown under agricultural condi-**
18 **tions as described in ORS 321.267 (3) or 321.824 (3), western juniper or products from har-**
19 **vested western juniper.**

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 (5) "Nonforest lands" means lands other than forestland.

2 (6) "Party" means Clackamas County or a Clackamas County employee or a producer or
3 dealer that carries out activities or engages in transactions regarding the Clackamas
4 Forestry Product Cooperative Project.

5 (7) "Producer" means a possessor of land on which trees are grown for harvesting as
6 forestry products.

7 **SECTION 2.** (1) The Legislative Assembly finds and declares that because of the logistical
8 challenges associated with the utilization of individual trees on nonforest lands, and because
9 of the benefits from gains in commercial production and marketing of forestry products that
10 may result from coordinating the activities of producers and buyers, it is in the public in-
11 terest to establish cooperatives to coordinate the tracking, removal and sale of trees and to
12 set prices to accomplish increased utilization.

13 (2) It is the intent of sections 1 to 7 of this 2015 Act to displace competition through a
14 regulatory system for the commercial production and marketing of forestry products on
15 nonforest land under a Clackamas County program, referred to in sections 1 to 7 of this 2015
16 Act as the Clackamas Forestry Product Cooperative Project, to a limited degree and for the
17 period specified in subsection (7) of this section. The regulatory system is intended to grant
18 immunity from federal and state antitrust laws to the Clackamas Forestry Product Cooper-
19 ative Project parties for the limited purposes of allowing the parties to bargain collectively
20 and to arrive at a negotiated price for forestry products produced on nonforest land within
21 Clackamas County.

22 (3) The activities of any party that comply with the regulatory system described in
23 sections 1 to 7 of this 2015 Act and State Forester rules for carrying out the regulatory
24 system and the Clackamas Forestry Product Cooperative Project may not be considered to
25 be in restraint of trade, a conspiracy or combination or any other unlawful activity in vio-
26 lation of any provision of ORS 646.705 to 646.826 or federal antitrust laws.

27 (4) The State Forester shall actively supervise the conduct of a party in negotiating
28 tentative prices for forestry products bought and sold as part of the Clackamas Forestry
29 Product Cooperative Project. The State Forester shall actively supervise, and establish pro-
30 cedures and guidelines for, the negotiations between the parties and shall review the tenta-
31 tive prices established by those negotiations. The State Forester must set the prices for
32 forestry products bought and sold as part of the project by formal action before the prices
33 may be implemented. In setting the prices for the forestry products, the State Forester may
34 give consideration to the tentative prices for those forestry products negotiated between the
35 parties. The State Forester must make any adjustments to previously set prices for forestry
36 products by formal action before the adjustments may be implemented.

37 (5) The State Forester may compel the parties to take whatever action the State
38 Forester considers necessary to:

39 (a) Ensure that the parties are engaging in conduct that is authorized under sections 1
40 to 7 of this 2015 Act;

41 (b) Ensure that the policies of this state are being fulfilled under the Clackamas Forestry
42 Product Cooperative Project; and

43 (c) Prevent conduct by any of the parties that is not authorized by the regulatory system
44 administered by the State Forester or conduct that, in the opinion of the State Forester,
45 does not advance the interests of this state in carrying out the regulatory system for the

1 **Clackamas Forestry Product Cooperative Project.**

2 (6) The State Forester may take any actions the State Forester deems appropriate to
3 resolve disputes between the parties that involve or arise out of the Clackamas Forestry
4 Product Cooperative Project, including but not limited to referring the dispute for mediation,
5 arbitration or hearing.

6 (7) Except as provided in section 7 of this 2015 Act, for the period prior to July 1, 2019,
7 the Clackamas Forestry Product Cooperative Project shall displace competition regarding the
8 commercial production and marketing of forestry products on nonforest land in those areas
9 of the county where the project is in effect.

10 (8) The State Forester may designate employees of the State Forestry Department to
11 carry out the responsibility of actively supervising the conduct of the parties, including
12 serving as intermediaries between parties or prospective parties.

13 (9) The State Forester may adopt rules to carry out the State Forester's authority under
14 sections 1 to 7 of this 2015 Act. The department and the county shall enter into a memo-
15 randum of understanding for the county to reimburse the department for the actual costs
16 to the department of providing services for the benefit of the Clackamas Forestry Product
17 Cooperative Project. Moneys paid by the county as reimbursement shall be deposited in the
18 State Forestry Department Account established under ORS 526.060.

19 **SECTION 3.** (1) Clackamas County shall establish the Clackamas Forestry Product Co-
20 operative Project as a pilot program. In addition to promoting economic development within
21 Clackamas County, the purpose of the project shall be to develop a program model for use
22 by counties in this state that wish to promote economic development by using cooperatives
23 to provide for the commercial production and marketing of forestry products from nonforest
24 lands. Subject to section 2 of this 2015 Act, Clackamas County may do the following to carry
25 out the pilot program:

26 (a) Subject to section 4 of this 2015 Act, negotiate and enter into an agreement with
27 persons, cities or other governmental entities willing to commercially produce forestry pro-
28 ducts as members of the Clackamas Forestry Product Cooperative Project. The agreement
29 must specify the number, type and location of trees covered by the agreement. The State
30 Forester may impose additional requirements for the contents of agreements described in
31 this paragraph.

32 (b) Negotiate with one or more producers and dealers to establish the price for the
33 forestry products sold through the cooperative. The dealers may negotiate the price for the
34 forestry products through a committee that sets forth the views of the dealers and votes on
35 any issues being negotiated as authorized by this section, including the price for forestry
36 products. However, a person that is both a producer and a dealer may not participate in
37 negotiations under this section.

38 (2) A tree that is covered by an agreement under subsection (1)(a) of this section must
39 be marked for identification purposes as required by the county.

40 (3) An agreement under subsection (1)(a) of this section may not be used to alter the
41 supply of buildable land within an urban growth boundary.

42 (4) If the land on which a tree subject to the Clackamas Forestry Product Cooperative
43 Project is located is sold, the tree shall continue to be a tree subject to the Clackamas
44 Forestry Product Cooperative Project unless:

45 (a) The new owner of the land removes the tree from the project; or

1 **(b) The county project coordinator determines that the tree is not being maintained as**
2 **required by the project.**

3 **SECTION 4. (1) The Clackamas Forestry Product Cooperative Project shall operate:**

4 **(a) In all areas of Clackamas County that are outside of city limits;**

5 **(b) On residential or commercial properties, or properties owned by nonprofit entities,**
6 **located in a city that elects to allow the project within the city limits; and**

7 **(c) On lands owned by any governmental entity that elects to participate in the project.**

8 **(2) An election by a city or other governmental entity to allow or participate in the**
9 **project must be by formal action of the governing body for the city or other governmental**
10 **entity.**

11 **(3) Clackamas County may undertake efforts to inform cities and other governmental**
12 **entities about the Clackamas Forestry Product Cooperative Project and the opportunities for**
13 **the cities and governmental entities to elect to allow or participate in the project.**

14 **(4) The county and a city may work jointly to adopt components of the Clackamas**
15 **Forestry Product Cooperative Project within city limits. A city electing to allow the project**
16 **to may specify how the project is to be administered within the city limits, including but not**
17 **limited to specifications regarding land use zoning requirements, maintenance requirements**
18 **and the issuance of tree removal permits for harvesting of trees enrolled in the program.**
19 **This subsection does not authorize a city to regulate the project on lands owned by a gov-**
20 **ernmental entity described in subsection (1)(c) of this section that are located inside city**
21 **limits.**

22 **(5) If a change in city limits causes a property that is participating in the Clackamas**
23 **Forestry Product Cooperative Project to become located inside city limits, notwithstanding**
24 **any other provision of this section, the property may continue to participate in the project**
25 **under the terms of the agreement described in section 3 (1)(a) of this 2015 Act for that**
26 **property.**

27 **(6) Except as provided in subsections (4) and (7) this section, a local government may not**
28 **enforce an ordinance to require or prohibit the removal of a tree that is subject to the**
29 **Clackamas Forestry Product Cooperative Project. This subsection does not prohibit a local**
30 **government from:**

31 **(a) Enforcing a county ordinance approved by the State Forester for regulating trees**
32 **subject to the Clackamas Forestry Product Cooperative Project or regulating land on which**
33 **a tree that is subject to the project is located;**

34 **(b) Enforcing a county ordinance adopted to implement comprehensive plan policies de-**
35 **veloped to address statewide land use goals;**

36 **(c) Enforcing a local ordinance regulating a tree that is removed from the Clackamas**
37 **Forestry Product Cooperative Project;**

38 **(d) Exercising the power of eminent domain to acquire fee title to the land on which a**
39 **tree that is subject to the Clackamas Forestry Product Cooperative Project is located; or**

40 **(e) Acting or requiring action to remedy or mitigate a hazardous condition in a tree that**
41 **presents an imminent threat of serious harm to persons or property.**

42 **(7) Subsection (6) of this section does not prevent the application of a local ordinance to**
43 **require or prohibit the removal of a tree if the tree becomes subject to the Clackamas**
44 **Forestry Product Cooperative Project more than five years after the tree is planted.**

45 **(8) This section does not require a county project coordinator or the State Forester to**

1 consent to the inclusion or continued inclusion of a tree in the Clackamas Forestry Product
2 Cooperative Project.

3 **SECTION 5.** The county program model that Clackamas County develops through the
4 Clackamas Forestry Product Cooperative Project must include, but need not be limited to:

5 (1) A training manual to guide counties in establishing and administering cooperatives
6 for the commercial production and marketing of forestry products on nonforest lands;

7 (2) Information identifying tree species best suited for use in western Oregon for
8 producing forestry products;

9 (3) An Internet website for use by the county, producers and dealers to establish agree-
10 ments under the program;

11 (4) Standardized memorandums of understanding setting forth the services provided and
12 the terms of program participation;

13 (5) Care instructions and identification of best practices for the production of forestry
14 products;

15 (6) Means for identifying and monitoring the status of trees in the program; and

16 (7) Materials for the marketing of, and promoting demand for, forestry products.

17 **SECTION 6.** (1) The governing body of Clackamas County shall appoint an advisory
18 committee to provide the county with recommendations regarding the structure and opera-
19 tion of the Clackamas Forestry Product Cooperative Project in a successful manner, includ-
20 ing but not limited to recommendations for addressing the concerns of the local governments
21 and business interests within the county and recommendations regarding the marketing of
22 forestry products.

23 (2) To the extent practicable, the advisory committee appointed under subsection (1) of
24 this section shall include but need not be limited to representatives from:

25 (a) The Association of Oregon Counties;

26 (b) The League of Oregon Cities;

27 (c) The Department of Transportation;

28 (d) A conservation organization;

29 (e) The forest products industry;

30 (f) The nursery products industry; and

31 (g) The Oregon Wood Innovation Center operated by Oregon State University.

32 **SECTION 7.** The State Forester may terminate the Clackamas Forestry Product Coop-
33 erative Project if the State Forester determines that the project is not being conducted in
34 accordance with sections 1 to 7 of this 2015 Act or rules adopted under section 2 of this 2015
35 Act.

36 **SECTION 8.** (1) Clackamas County shall report on progress in the development of the
37 Clackamas Forestry Product Cooperative Project described in sections 1 to 7 of this 2015 Act:

38 (a) To an interim committee of the Legislative Assembly dealing with economic develop-
39 ment during September 2015;

40 (b) To the 2016 regular session of the Legislative Assembly; and

41 (c) To an interim committee of the Legislative Assembly dealing with economic develop-
42 ment during September 2016.

43 (2) The reports made under this section must be accompanied by accountings sufficient
44 to establish that expenditures of moneys described in section 9 of this 2015 Act are used
45 solely for the purpose of developing, implementing and administering the Clackamas Forestry

1 **Product Cooperative Project.**

2 (3) The county shall make all reasonable efforts to implement and make the Clackamas
3 Forestry Product Cooperative Project fully operational no later than June 1, 2017.

4 **SECTION 9.** There is allocated, for the biennium beginning July 1, 2015, from the Ad-
5 ministrative Services Economic Development Fund, to Clackamas County, the amount of
6 \$750,000 as a grant for the purpose of developing, implementing and administering the
7 Clackamas Forestry Product Cooperative Project described in sections 1 to 7 of this 2015 Act.

8 **SECTION 10.** (1) Sections 1 to 7 of this 2015 Act are repealed January 2, ____.

9 (2) Any activities under an agreement entered into as part of the pilot program described
10 in sections 1 to 7 of this 2015 Act must cease on or before the repeal date established in
11 subsection (1) of this section.

12 **SECTION 11.** This 2015 Act being necessary for the immediate preservation of the public
13 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
14 July 1, 2015.