

# House Bill 2985

Sponsored by Representatives PARRISH, BUEHLER, WITT; Representatives BARKER, BARRETO, BARTON, BOONE, BUCKLEY, DAVIS, DOHERTY, ESQUIVEL, EVANS, FAGAN, GALLEGOS, GOMBERG, GORSEK, HACK, HELM, HUFFMAN, JOHNSON, KENNEMER, 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, 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 **as introduced**.

Authorizes counties to establish programs for forestry products grown on nonforest lands in counties to be commercially produced and marketed through forestry product cooperatives. Requires state regulatory system for oversight of county projects. Declares project party activities regulated under state system exempt from antitrust laws.

Prohibits application of local ordinance to require or prohibit removal of tree enrolled in forestry product cooperative project. Creates exceptions.

## A BILL FOR AN ACT

1  
2 Relating to forestry product cooperatives.

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

### **SECTION 1. As used in sections 1 to 5 of this 2015 Act:**

4  
5 (1) **“County project coordinator” means the county forester or a designee of the county**  
6 **forester or, if there is no county forester, a designee of the county governing body.**

7 (2) **“Dealer” means a person or agent of a person, other than a cooperative, that pur-**  
8 **chases or contracts to purchase forestry products.**

9 (3) **“Forestry product cooperative project” means a county program, administered by a**  
10 **county project coordinator, for forestry products grown on nonforest land within the county**  
11 **to be commercially produced and marketed through a forestry products cooperative.**

12 (4) **“Forestry products” means trees or tree products suitable for use to sustain a**  
13 **sawmill, plywood mill, pulp mill or other forest industry related manufacturing facility.**

14 (5) **“Local government” has the meaning given that term in ORS 174.116.**

15 (6) **“Nonforest lands” means lands other than:**

16 (a) **Lands in western Oregon that are forestland as defined in ORS 321.257; or**

17 (b) **Land in eastern Oregon that are forestland as defined in ORS 321.805.**

18 (7) **“Party” means a county, county project coordinator, county employee, producer or**  
19 **dealer that carries out activities or engages in transactions regarding a forestry product**  
20 **cooperative project.**

21 (8) **“Producer” means a possessor of land on which trees are grown for harvesting as**  
22 **forestry products.**

23 **SECTION 2. (1) It is the intent of sections 1 to 5 of this 2015 Act to allow the displace-**  
24 **ment of competition through a regulatory system for the production and marketing of**  
25 **forestry products under the forestry product cooperative projects of counties to a limited**  
26 **degree. The regulatory system is intended to grant immunity from federal and state anti-**

**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 trust laws to the parties to a forestry product cooperative project for the limited purpose  
 2 of allowing the parties to bargain collectively and to arrive at a negotiated price for forestry  
 3 products produced on nonforest land within a county.

4 (2) The activities of any party that comply with the requirements of the regulatory sys-  
 5 tem described in sections 1 to 5 of this 2015 Act and State Forester rules for carrying out  
 6 the regulatory system and forestry product cooperative projects may not be considered to  
 7 be in restraint of trade, a conspiracy or combination or any other unlawful activity in vio-  
 8 lation of any provision of ORS 646.705 to 646.826 or federal antitrust laws.

9 (3) The State Forester shall actively supervise the conduct of a party in establishing the  
 10 price of forestry products bought and sold as part of a forestry product cooperative project.  
 11 The State Forester shall supervise, and may establish procedures and guidelines for, the  
 12 negotiations between the parties, review the prices established by the negotiations and ap-  
 13 prove the prices proposed by the parties before the prices take effect. Any adjustments to  
 14 previously approved prices must be approved by the State Forester before the adjustments  
 15 may be implemented.

16 (4) The State Forester may compel the parties to take whatever action the State  
 17 Forester considers necessary to:

18 (a) Ensure that the parties are engaging in conduct that is authorized under sections 1  
 19 to 5 of this 2015 Act;

20 (b) Ensure that the policies of this state are being fulfilled under a forestry product co-  
 21 operative project; and

22 (c) Prevent conduct by any of the parties that is not authorized under the regulatory  
 23 system administered by the State Forester or conduct that, in the opinion of the State  
 24 Forester, does not advance the interests of this state in carrying out the regulatory system  
 25 for forestry product cooperative projects.

26 (5) The State Forester may take any actions the State Forester deems appropriate to  
 27 resolve disputes between the parties that involve or arise out of a forestry product cooper-  
 28 ative project, including but not limited to referring the dispute for mediation, arbitration or  
 29 hearing.

30 (6) The State Forester may designate employees of the State Forestry Department to  
 31 carry out the responsibility of actively supervising the conduct of the parties, including  
 32 serving as intermediaries between parties or prospective parties.

33 (7) The State Forester may adopt rules to carry out the State Forester's authority under  
 34 sections 1 to 5 of this 2015 Act. The department and a county operating a forestry product  
 35 cooperative project program shall enter into a memorandum of understanding for the county  
 36 to reimburse the department for the actual costs to the department of providing services for  
 37 the benefit of the program. Moneys paid by a county as reimbursement shall be deposited  
 38 in the State Forestry Department Account established under ORS 526.060.

39 **SECTION 3.** Subject to section 2 of this 2015 Act, a county administering a forestry  
 40 product cooperative project may do the following to carry out the program:

41 (1) Negotiate and enter into an agreement with any person or governmental entity willing  
 42 to commercially produce forestry products as a member of the forestry product cooperative.  
 43 The agreement must specify the number, type and location of trees covered by the agree-  
 44 ment. The State Forester may impose additional requirements for the contents of agree-  
 45 ments described in this subsection.

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

6 (3) Enter into intergovernmental agreements with other counties for the sharing of ad-  
 7 ministrative or other project resources and services and to provide for joint action by the  
 8 counties in the selling of forest projects. An intergovernmental agreement described in this  
 9 subsection may not take effect unless the agreement has been reviewed and approved by the  
 10 State Forester. An intergovernmental agreement described in this subsection is a part of the  
 11 forestry product cooperative project of each county entering into the agreement. An inter-  
 12 governmental agreement described in this subsection must include a provision allowing a  
 13 county to withdraw from the agreement after notice to the other party counties and to the  
 14 State Forester.

15 **SECTION 4.** (1) Except as provided in this section, a local government may not enforce  
 16 an ordinance to require or prohibit the removal of a tree that is enrolled in a forestry  
 17 product cooperative project. This subsection does not prohibit a local government from:

18 (a) Enforcing a county ordinance approved by the State Forester for regulating trees  
 19 enrolled in a forestry product cooperative project or regulating land on which a tree that is  
 20 enrolled in a forestry product cooperative project is located;

21 (b) Enforcing a local ordinance regulating a tree that is removed from enrollment in a  
 22 forestry product cooperative project;

23 (c) Exercising the power of eminent domain to acquire fee title to the land on which the  
 24 tree is planted; or

25 (d) Acting or requiring action to remedy or mitigate a hazardous condition in a tree that  
 26 presents an imminent threat of serious harm to persons or property.

27 (2) ORS chapter 321 and ORS 527.610 to 527.770 do not apply to a tree that is enrolled in  
 28 a forestry product cooperative project or to land on which a tree that is enrolled in a  
 29 forestry product cooperative project is located.

30 (3) This section does not prevent the application of a local ordinance to require or pro-  
 31 hibit the removal of a tree if the enrollment of the tree in the forestry product cooperative  
 32 project occurred more than five years after the tree is planted.

33 (4) This section does not require a county project coordinator or the State Forester to  
 34 consent to the inclusion or continued inclusion of a tree in a forestry product cooperative  
 35 project.

36 **SECTION 5.** (1) A county may not have more than one forestry product cooperative  
 37 project operating.

38 (2) The State Forester may terminate the participation of a forestry product cooperative  
 39 project in the regulatory system established under sections 1 to 5 of this 2015 Act if the State  
 40 Forester determines that the project is not being conducted in accordance with sections 1  
 41 to 5 of this 2015 Act or rules for carrying out the regulatory system.

42 (3) If the land on which a tree enrolled in a forestry product cooperative project is lo-  
 43 cated is sold, the tree shall continue to be a tree enrolled in the forestry product cooperative  
 44 project unless:

45 (a) The new owner of the land removes the tree from enrollment in the program; or

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

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