

Chapter 768

Booming, Rafting and Logging Road Companies

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CROSS REFERENCES

- Forest roads and ways, Ch. 376
- Public use, use of roads and ways to transport forest products for a beneficial purpose as, Const. Art. I, § 18
- 768.010**
- Franchise for logging road on county roads, 376.145
- 768.120**
- Branding of forest products and equipment used in connection therewith, Ch. 532
- 768.180**
- Condemnation of land for forest product ways, 376.505 to 376.540
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- Recovery of forest products from another's land, Ch. 99
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- Procedure for county court to establish trails or watercourses as public highways, 376.205 to 376.220

LOGGING ROAD COMPANIES

768.010 Incorporation; corporate powers and status. (1) Any three or more persons may incorporate a company, having for its principal object the construction, maintenance and operation of logging roads, chutes, flumes and artificial watercourses or waterways and other ways, for the transportation of logs and other timber products.

(2) Such corporation may:

(a) Acquire, hold, use and transfer any real and personal property reasonably necessary for carrying on the business of the corporation.

(b) Build, construct, maintain and operate logging roads whether skid roads, railroads or any other kind; also chutes, flumes and artificial watercourses, waterways and other ways, for the transportation of logs or any other timber products within the state, together with all necessary yarding grounds, railways and landings.

(3) Corporations organized under this section are considered to be quasi-public corporations and common carriers.

768.020 Impartial service; reasonable rates; lien for charges. (1) After any logging road, way, chute, flume or artificial watercourse or other improvements have been constructed, the corporation shall transport all timber products offered to it for carriage as its means of transportation are adapted to carry.

(2) The corporation may charge reasonable tolls for the use of the improvement, which tolls shall be uniform, having due regard to the portion or length of any such logging road, way, chute, flume or artificial watercourse or other improvements used by any person.

(3) The corporation shall have a lien for the amount of its reasonable tolls and charges upon all timber products transported by it over its logging road, way, chute, flume or artificial watercourse. The lien shall be enforced in the manner provided in ORS 768.270 and 768.280.

768.030 Condemnation procedure; limitations on use; abandonment and reversion to owner. (1) Any corporation organized under ORS 768.010 may condemn property for its use in the manner provided by ORS chapter 35, but this right shall not be exercised by any such corporation with respect to any residence, and any property acquired by the corporation under this section by con-

demnation shall be used exclusively for the purposes of ORS 768.010 to 768.030.

(2) Whenever the income from the operation of the logging road, or other way, of the corporation does not equal, for any period of six months, five percent per annum on the capital stock of the corporation, the corporation may abandon its logging road or way and discontinue the operation thereof. Upon filing in the office of the county clerk of the counties in which the logging road or way lies, a formal notice of such abandonment, the property of the corporation which was secured by condemnation under this section shall revert to the original owner at the time of such condemnation, his heirs or assigns.

(3) This section shall not be construed to authorize the taking or damaging of any power plant constructed or being constructed for the creation or utilization of water power.

768.040 to 768.100 [Reserved for expansion]

REGULATION OF COMPANIES FLOATING, DRIVING, BOOMING OR RAFTING FOREST PRODUCTS

768.110 Definitions. As used in ORS 768.110 to 768.330, unless the context requires otherwise:

(1) "Commissioner" means the Public Utilities Commissioner.

(2) "County court" means the governing body of the county, whether it is a county court or a board of county commissioners.

(3) "Franchise holder" means any person to whom a franchise is granted under ORS 768.110 to 768.330.

(4) "Person" means any corporation, partnership, company, individual, or its assignees, vendees, lessees, trustees or receivers, when engaged as a common carrier in the driving, catching, booming, sorting, rafting and holding logs, lumber or other timber products.

768.120 Jurisdiction and supervision of commissioner. (1) All persons driving, catching, booming, sorting, rafting and holding logs, lumber or other timber products, are under the jurisdiction of the commissioner.

(2) The commissioner shall supervise and regulate all persons engaged in driving, catching, booming, sorting, rafting and holding logs, lumber or other timber products

and shall, by general order or otherwise, prescribe and enforce rules and regulations in conformity with ORS 768.120 to 768.330 governing such operations, which rules and regulations shall also provide a clear method of identification of forest products after being rafted and boomed, the record of which shall be open for public inspection, and including rules for assorting and delivering logs or other timber products.

768.130 Application for franchise. (1) Before any person can do business under ORS 768.110 to 768.330, he shall apply to the commissioner for a franchise on the streams sought to be used by him.

(2) The application shall generally state the character of the contemplated improvement and be accompanied by a map showing the stream or part thereof sought to be improved.

768.140 Notice of hearing of application. (1) Upon the filing of an application and map under ORS 768.130, the commissioner shall give notice of a hearing to be held upon such application. The applicant shall post copies of such notice in six conspicuous places along the course of the portion of the stream sought to be improved, and publish a copy of the notice for at least four weeks in at least one newspaper published in the county in which such stream or part thereof is situated. Proof of such posting and publication shall be made by affidavit of the person posting and of the printer or publisher of such newspaper, filed with the commissioner prior to the hearing called thereby.

(2) No franchise shall be granted by the commissioner unless it appears from the record that notice of the time and place of the hearing upon the application for such franchise was personally or by publication served not less than 10 days before such hearing upon each person owning or operating any dam or boom in the stream for which the application for the franchise is made.

768.150 Hearing; granting of franchise; duration; abandonment. (1) At the hearing under ORS 768.140 all persons interested may be heard either by person or attorney.

(2) The commissioner may grant a franchise to any qualified applicant therefor, authorizing all or part of the operations covered by the application, if it is found that the applicant is fit, willing and able properly to perform the service proposed and to con-

form with ORS 768.110 to 768.330 and the requirements, rules and regulations of the commissioner thereunder, and that the proposed service to the extent to be authorized by the franchise is or will be a public benefit. Otherwise such application shall be denied.

(3) A franchise granted under this section shall be in effect until revoked by the commissioner.

(4) No person receiving a franchise under this section shall abandon all or any portion of such franchise or the operation thereof, unless and until there is first obtained from the commissioner a certificate that the public benefit permits abandonment.

768.160 Rights under franchise. (1) If the commissioner grants the franchise, he may impose such conditions and restrictions upon the exercise of the rights granted by such franchise as seem just and proper to him, including such conditions and restrictions as may be necessary to protect the vested rights of any person upon any such stream, and including the terms and conditions upon which splash dams may be operated. In any event the commissioner shall provide in the franchise that the franchise holder in operating thereunder shall not interfere with the construction when justly compensated, or with the maintenance or operation of any dam or power works constructed in any such stream for the purpose of supplying the public with electric energy.

(2) Upon the granting of the franchise, the franchise holder may construct, maintain and use all necessary sheer or receiving booms, dolphins, piers, piles or other structures necessary for carrying on the business under such franchise in the waters covered by the franchise.

(3) The franchise holder may acquire, hold, use and transfer all such real and personal property 'by lease or purchase as is necessary for carrying on his business under the franchise.

768.170 Franchise fees; access to records and reports. (1) In order to provide funds for the purpose of carrying out ORS 768.010 to 768.330, the franchise holder shall pay the following fees on all forest products handled by him:

(a) One and one-half cents per 1,000 feet, board measure, on all sawlogs, and an equivalent amount for all forest products handled under the terms of its franchise, if he is engaged only in floating or driving such forest products.

(b) One cent per 1,000 feet, board measure on all sawlogs, and an equivalent amount on all other forest products, if he is engaged only in booming or rafting such forest products.

(c) A combination of the fees in paragraphs (a) and (b) of this subsection, if he performs all the services set forth in this subsection.

(2) For the purpose of ascertaining the amounts to be so paid, the commissioner shall have full access to all books and records of the franchise holder and shall be entitled to receive upon demand full and accurate reports of the amount of forest products handled by him.

(3) The fees prescribed by this section shall be paid into the State Treasury and deposited in the General Fund.

768.180 Condemnation of property by franchise holder; use of property; reversion for misuse. (1) If the franchise holder is not able to agree with the persons owning land, shore rights or other property sought to be condemned, as to the amount of compensation to be paid therefor, the condemnation procedure in ORS chapter 35 shall be followed. Any property acquired under this section by condemnation shall be used exclusively for the purpose of operation under the franchise. Whenever such use of the property ceases without the consent of the commissioner for a period of two years, it shall revert to the original owner, his heirs or assigns.

(2) The right of condemnation under this section does not extend to the right of condemning the property of any other booming company necessarily used in the operation of such company.

(3) The use of such streams and property acquired by the franchise holder, for the purpose of operating under such franchise, hereby is declared to be a public use.

768.190 Navigable waters are public highways; franchise holder a common carrier; improvement of waters a public use. (1) All navigable waters in this state shall be deemed public highways, and the franchise holder is declared a common carrier for the purposes of ORS 768.010 to 768.330.

(2) The improvement of such streams, sloughs and waters shall be deemed and declared a public use and benefit.

768.200 What streams are navigable; powers of franchise holder as to streams and

adjacent lands; compensation for damage.

(1) Any stream or its tributaries in this state upon which logs or other forest products can be floated during certain periods of the year with or without the use of a splash dam, except Oswego Lake, hereby is declared to be a navigable stream and subject to the granting of a franchise to a person as provided in ORS 768.110 to 768.330.

(2) Any franchise holder may enter upon said stream, remove rocks or other obstructions therein, build any necessary sheer booms, piers, piling, dolphins or improvements in the bed of said stream necessary to carry out the purposes of the franchise, and for the returning of logs or other forest products that leave the stream bed during high water and lodge upon the banks and lands adjacent to the said stream. A franchise holder may enter upon the lands adjacent to the stream for the purpose of recovering any logs or timber products deposited thereon by high water.

(3) However, the owners of the adjacent lands have the right of compensation for all damages sustained by them in the recovery of said logs or other forest products. Moreover, if any of the booms, piers, piling or other improvements placed in the bed of said stream cause damage to the lands abutting on said stream, the owners of such lands shall be compensated for the damage so caused.

768.210 Time limit for completion of improvements; filing of statements of progress. (1) At the time of granting any franchise under ORS 768.150, the commissioner shall, in such franchise, fix the time within which the improvement of the stream shall be made by the franchise holder.

(2) Every franchise holder, within 30 days after the expiration of the time for such improvement so fixed, shall file with the commissioner a verified statement, in detail, of the character and cost of such improvement.

(3) Between January 1 and 10 of each year thereafter, the franchise holder shall file with the commissioner a verified statement in detail showing the character and cost of all betterments and improvements made under the franchise during the preceding calendar year.

768.220 Franchise holder to furnish adequate services at reasonable rates. (1) Every franchise holder is required to furnish reas-

onably adequate service, equipment and facilities. The charges made for any service rendered or to be rendered in the driving, rafting, floating or booming of logs or other forest products, or for any service in connection therewith, shall be reasonable and just, depending upon the amount of service performed and the investment of the driving, rafting or booming company.

(2) In determining whether the charges or rates are reasonable or just, the commissioner shall not take into consideration the value of the franchise granted to any franchise holder.

(3) Every unjust or unreasonable charge for such service is prohibited.

768.230 Filing schedules of rates. (1) Every franchise holder shall print, in plain type, and file with the commissioner within a time to be fixed by the commissioner, schedules which shall be open to public inspection, showing all rates and charges for the rafting, driving, floating, booming and sorting of logs or other forest products, and any service in connection therewith which it has established. The schedules shall embrace all rules and regulations that in any manner affect the rates charged or to be charged for such service.

(2) A copy of the schedules for the use of the public shall be filed and kept on file in the principal office of the franchise holder in the county where such service is performed. The schedule shall be in such form and place as to be accessible to the public and where it can be conveniently inspected.

(3) When forest or other timber products are transported on any stream or its tributaries by more than one franchise holder, a schedule of joint rates and charges shall also in like manner be printed and filed with the commissioner and be kept on file within the principal office of such franchise holder.

768.240 Procedure for change in schedules. (1) No change shall be made in any schedule, including schedule of joint rates, except upon 10 days' notice to the commissioner. All such changes shall be plainly indicated upon existing schedules or by filing new schedules in lieu thereof 10 days prior to the time they are to take effect; provided, the commissioner, upon application of any franchise holder, may prescribe a less time in which a reduction may be made.

(2) Copies of all new schedules shall be filed as provided for original schedules in ORS 768.230.

768.250 Compliance with rate schedule required. No franchise holder shall charge, demand, collect or receive a greater or less compensation for the rendering of any service than is specified in the printed schedule, including schedules of joint rates as may at the time be in force. The rates and charges named therein shall be the lawful rates and charges until they are changed as provided in ORS 768.240.

768.260 Impartial service required; possessory lien for charges. (1) A franchise holder shall handle all forest products offered for driving, rafting or booming on such streams without discrimination as to ownership.

(2) The franchise holder shall have a lien upon all logs, timber and other forest products so handled for his just and reasonable charges for services performed, and may retain possession of such property until his just and reasonable charges are paid.

768.270 Procedure for foreclosure of lien by sale. (1) If the amount of the lien is not paid within one year after logs, timber or other forest products are received by the franchise holder or services performed, the franchise holder may foreclose the lien by selling the property at public auction.

(2) The franchise holder shall give at least 30 days' notice of sale thereof by posting a notice of sale in three public places in the county wherein the property is located. The franchise holder shall also, at least 30 days previous to the date of sale, send by registered mail a copy of the notice of sale to all known owners, mortgagees and lien claimants at their last known postoffice address. The notice shall describe the property, specify the ownership thereof, if known, and the amount of the lien of the franchise holder, and state that the property will be sold, at the time and place therein specified, to satisfy the lien, and the expenses of sale, to the highest bidder for cash.

(3) All sales shall be conducted between 9 a.m. and 4 p.m. at the place where the property is located. The property may be sold in separate parcels. The sale may, by proclamation, be adjourned from time to time, not exceeding 30 days in all.

(4) The franchise holder, upon payment of the purchase price, shall execute and deliver to the purchaser a bill of sale describing the property sold and specifying the lien for which sold and the amount of the purchase price, and the name of the purchaser. The sale shall operate to vest title to the property sold in the purchaser, free and clear of all liens and encumbrances, but any other person holding liens or encumbrances thereon shall not be divested of the right to enforce such liens or encumbrances against any surplus that may remain after satisfying the lien of the franchise holder, nor prevent the owner from claiming such surplus.

(5) The franchise holder, within 30 days after the sale, shall file with the county clerk of the county a verified report of the sale, with verified proofs of posting and mailing the notices of sale attached, and shall pay to the county clerk a fee of \$1 for filing the report. The county clerk shall keep an appropriate index record of all such reports filed.

768.280 Foreclosure by suit in equity.

(1) In lieu of foreclosing a lien under ORS 768.270, the franchise holder may foreclose the lien by a suit in equity in the circuit court of the county wherein the property is located.

(2) In such suit, in addition to the amount of such lien and the cost and disbursements of such suit, the franchise holder shall be entitled to a judgment for such sum as attorney fees as the court may adjudge reasonable.

(3) If the property sells for an amount more than sufficient to satisfy the lien, reasonable attorney fees and costs and disbursements of foreclosure and of sale, whether sold by the franchise holder or order of court, the surplus shall forthwith be deposited with the county clerk of the county, who shall turn it over to the county treasurer. If the surplus is not claimed within six years, it shall become the property of the county.

768.290 Revocation of franchise. Any franchise holder who fails, after due notice and hearing by the commissioner, to perform the service specified by the franchise for a period of two years, or who violates any conditions therein or persistently violates any of the orders, rules or regulations provided by the commissioner for him, may suffer the revocation of his franchise by the commissioner.

768.300 Liability of franchise holder for damages due to violation of franchise or commissioner's orders. Any person aggrieved by failure of the franchise holder to comply with the conditions of the franchise and with the orders, rules and regulations prescribed by the commissioner has a right of action against the franchise holder for damages sustained by reason of such failure.

768.310 Complaints and investigations of rates, regulations, practices and services; hearings; orders. (1) Upon complaint of any person that any rate, charge, joint rate, regulation or practice affecting the booming, driving, rafting, floating or sorting of forest products, or any service in connection therewith, are in any respect unreasonable or unjustly discriminatory, or that any service is inadequate, the commissioner may notify the franchise holder complained of that complaint has been made.

(2) Ten days after such notice has been given the commissioner may proceed to investigate the same, but before proceeding to make such investigation the commissioner shall give the franchise holder and the complainant 10 days' notice of the time when and place where such matters will be considered and determined. The parties shall be entitled to be heard and shall have process to enforce the attendance of witnesses.

(3) If upon such investigation, or upon any investigation made by the commissioner upon his own motion, the rate, charge, joint rate, regulation, practice or service complained of or investigated is found to be unreasonably or unjustly discriminatory, or the service is found to be inadequate, the commissioner may fix, and order substituted therefor, such rates or charges as he has determined to be just and reasonable and which shall be charged and followed in the future, and may make such orders respecting such regulation, practice or service as he has determined to be reasonable and just and which shall be followed, used and supplied in the future.

768.320 Suits to set aside orders of commissioner. (1) All rates, charges and joint rates fixed by the commissioner shall be in force and prima facie lawful, and all regulations, practices and service prescribed by the commissioner shall be in force and prima facie reasonable until finally found otherwise under subsection (2) of this section.

(2) The granting and revoking of a franchise or any order, regulation or rule made by the commissioner may be vacated and set aside on the same grounds and in the same manner as provided in ORS 757.565 to 757.585.

768.330 Forfeiture for violation of ORS 768.110 to 768.320 or commissioner's orders thereunder. (1) Any franchise holder who violates any provision of ORS 768.110 to 768.320, or fails to perform any duty enjoined upon him, or fails to obey any lawful requirement, order, rule or regulation made by the commissioner, shall forfeit and pay into the State Treasury a sum of not less than \$100 nor more than \$1,000 for each such violation or failure.

(2) In construing this section, the act, omission or failure of any officer, agent or other person acting for or employed by any franchise holder, acting within the scope of his employment, shall in every case be deemed to be the act, omission or failure of such franchise holder.

(3) Any forfeiture provided in this section shall be recovered by the commissioner in an action brought thereon in the name of the state in any court of appropriate jurisdiction.

768.340 to 768.400 [Reserved for expansion]

NONNAVIGABLE STREAMS AS PUBLIC HIGHWAYS FOR FLOATING TIMBER

768.410 Definitions. As used in ORS 768.410 to 768.460 "county court" means the governing body of the county, whether it is the county court or a board of county commissioners.

768.420 Declaration by county court that nonnavigable streams are public highways for floating timber; improvements.

(1) Upon application of any person interested, the county court of any county of this state may, by order, declare all or any portion of any river or stream lying within the county, which has not been declared by law to be navigable, and which is not in fact navigable for commercial purposes, to be a public highway for the floating and transportation of logs, timber and lumber. The river or stream shall thereupon be a public highway for such purpose, subject only to the reservations in ORS 768.420 to 768.460.

(2) The county court may also, at the same time, or at any time thereafter, direct the widening, deepening, straightening, removing obstructions from, building of dams and booms in, and otherwise improving such streams as may be necessary to render the same fit and suitable for the purpose intended, and enter into contracts for the performance of such work according to law.

768.430 Purchase of rights of nonconsenting adjacent owner. If any owner of land adjacent to or across which such stream flows does not consent to the use of the stream for such purpose, and the making of the improvements directed, with the right to pass along the banks of the stream for the purpose of doing the work and keeping the same in repair, and properly superintending and managing the use of such highway for the purpose intended, and the taking at a fair rate of compensation of such timber and other materials along the bed and banks of the stream as may be necessary for the construction and repair of the improvements, and grant the same to the county by suitable instrument in writing on application, the county court may contract for and purchase any or all of such rights.

768.440 Contracts by county to lease use of highway. Instead of itself securing the various rights and making the improvements necessary, the county court may enter into a contract with any person leasing the use of such highway with the right to collect tolls for the rafting, floating and booming of logs, timber and lumber thereon, at rates of toll for transporting and for booming, to be fixed by the court, for a period of years from the completion of the work to be fixed by the court, in consideration of an agreement in such contract to be contained, that the lessee will secure the right of way and other necessary rights from landowners, and make all improvements necessary for the successful carrying on of the business and use of the stream for the purposes intended, without any expense to the county, and keep the same in good repair during the period of such lease.

768.450 Bond of lessee. Within 10 days from the making of a contract under ORS 768.440, and before it goes into effect, the lessee shall enter into a bond in such sum as may be fixed by the county court, and with sureties approved by the court, condi-

tioned for the faithful performance of the covenants and agreements on the part of the lessee, in such contract contained.

768.460 Duty of lessee to receive timber offered for transportation; collection of tolls and rates; returning property upon expiration of lease. The lessee during the term of such lease shall receive and float, or allow to be floated, in such stream all floatable logs, timber and lumber that may be offer-

ed for transportation therein by any person, provided the same are plainly marked with a distinctive mark, and may charge and collect for his own use tolls therefor, and for booming the same, at rates fixed by the county court and inserted in the lease, and shall have a lien thereon for such tolls. Upon expiration of the lease, such lessee shall turn the property, with all the improvements, over to the county in good repair.

