

Chapter 527

1989 EDITION

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527.030 [Amended by 1957 c.33 §2; 1959 c.28 §2; repealed by 1971 c.316 §15]

527.040 [Amended by 1955 c.100 §2; repealed by 1971 c.316 §15]

527.050 [Amended by 1953 c.195 §2; 1959 c.83 §1; repealed by 1971 c.316 §15]

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527.091 [1959 c.28 §5; repealed by 1971 c.316 §15]

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527.170 [Amended by 1953 c.262 §2; 1961 c.221 §2; repealed by 1971 c.316 §15]

527.180 [Repealed by 1971 c.316 §15]

527.190 [Amended by 1953 c.262 §2; 1955 c.100 §6, 1961 c.221 §3; repealed by 1971 c.316 §15]

527.200 [Amended by 1953 c.262 §2; repealed by 1971 c.316 §15]

527.210 [Repealed by 1953 c.262 §2]

527.215 [1953 c.262 §3; 1955 c.100 §7; 1959 c.83 §2; repealed by 1971 c.316 §15]

527.220 [Amended by 1965 c.253 §149; repealed by 1971 c.316 §15]

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PROHIBITED ACTS

527.260 Injuring forest tree of another or extracting pitch without, or in violation of, a permit prohibited; permit to extract pitch. (1) No person shall wilfully and unlawfully;

(a) Bore or cut any forest tree belonging to another for the purpose of extracting pitch;

(b) Cut, injure or deface any such tree for the purpose of taking any part of it; or

(c) Injure or destroy any such tree.

(2) The State Forester, with the consent of the owner of the land, shall issue permits for the extraction of pitch from forest trees. The terms of the permits shall clearly de-

scribe the area to which the extraction shall be confined and state the precautions necessary, in the judgment of the State Forester, to be taken by the permittee, so that the extraction will not result in an increased fire hazard to life and adjoining property.

(3) No person shall:

(a) Bore or cut any forest tree for the purpose of extracting pitch without having first obtained a permit to do so; or

(b) Wilfully or negligently fail to comply with the terms of the permit.

527.280 [1953 c.375 §24, 1957 c.654 §2, 1961 c.297 §8; 1965 c.253 §83, renumbered 477.440]

527.282 [1953 c.375 §25; 1961 c.297 §9; renumbered 477.445]

527.284 [1953 c.375 §26; 1957 c.309 §12; repealed by 1961 c.297 §12]

527.286 [1953 c.357 §27; 1957 c.309 §13, subsection (2) of 1959 Replacement Part enacted as 1957 c.216 §1; repealed by 1961 c.297 §12]

527.288 [1953 c.375 §28; 1961 c.297 §10; renumbered 477.450]

527.290 [1953 c.375 §29; renumbered 477.455]

527.292 [1953 c.375 §30; 1961 c.297 §11; renumbered 477.460]

527.294 [1961 c.689 §10; repealed by 1965 c.253 §153]

INSECT AND DISEASE CONTROL

527.310 Definitions for ORS 527.310 to 527.400. As used in and for the purposes of ORS 527.310 to 527.400:

(1) "Owner" means any person owning timberlands or timber as shown on the latest records of the tax collector of the county in which the timberlands or timber is situated. Where timber is owned entirely separate and apart from the land whereon it grows or is situated, "owner" means any person owning such timber as shown on the latest records of the tax collector of the county in which the timber is situated.

(2) "Timberland" means any land which has enough timber or forest growths, standing or down, to constitute, in the judgment of the State Board of Forestry, a forest insect pest or forest tree disease breeding ground of a nature to be harmful, detrimental and injurious to timber or forest growth in the district under consideration.

(3) "Control" includes prevent, retard, suppress, eradicate or destroy, or any combination thereof.

(4) "Infestation" includes actual, potential, incipient infestation, or infection by forest insect pests or diseases. [Amended by 1967 c.87 §1]

527.320 Pests and diseases harmful to timber a public nuisance. Forest insect pests and forest tree diseases harmful, detrimental and injurious to timber and forest

growths infested thereby are declared to be a public nuisance.

527.330 Owner to destroy pests and diseases. Every owner of timberlands or timber shall control and destroy forest insect pests and forest tree diseases, or provide for the same to be done on timberlands or timber owned by the owner or under the control of the owner. In case of failure, neglect or inability of the owner to do so, the work may be performed as provided in ORS 527.350.

527.335 Investigations by State Forester concerning pests and diseases; access to privately owned lands. (1) The State Forester is hereby authorized to make surveys and investigations to determine the presence and extent of insect pests and tree diseases which are harmful, detrimental or injurious to timber and forest growths within this state, and in so doing, the forester or representatives of the forester may go upon privately owned lands with permission of the respective owners thereof, and should any owner withhold such permission and the forester believes an emergency exists, the forester may petition that circuit court of this state having jurisdiction over the lands involved for a warrant authorizing the forester or representatives of the forester to go upon such lands. Upon petition being made the court shall forthwith summarily determine whether or not such emergency exists, and if determining such emergency exists, immediately issue a warrant authorizing the forester or representatives of the forester to go upon such lands for the purposes of this section.

(2) The State Forester may cooperate with the United States or agencies thereof, other agencies of the state, county or municipal governments, agencies of other states or other public or private organizations or individuals and may accept such funds, equipment, supplies or services from cooperators and others as it may deem appropriate for the purposes of subsection (1) of this section.

(3) The State Forester is authorized to accept moneys from private and public sources for the purposes stated in subsection (1) of this section; provided, however, that such moneys shall be placed in the State Forestry Department Account and shall be continuously appropriated for such purposes. [1961 c.212 §1]

527.340 Designation of infestation control district by State Forester; service of notice to abate infestation. (1) Whenever the State Forester finds timberlands or timber infested or threatened to be infested with forest insects or forest tree diseases of such character as to be harmful, detrimental

and injurious to timber and forest growths, the forester shall determine whether measures of control are needed and are available, and the area over which the control measures should be applied. Thereafter, the State Forester shall, with the approval of the State Board of Forestry, designate an infestation control district and declare and fix the boundaries thereof so as definitely to describe and identify such district. The district may include timberlands or timber threatened by the infestation as well as those timberlands or timber already infested.

(2) Immediately thereafter the State Forester shall notify in writing all owners of timberlands or timber within the district to proceed without delay to destroy the forest insect pests or forest tree diseases. The notice may be served by delivery of a copy of the notice to the owner, or by mail addressed to the last known place of address of the owner, sealed, plainly addressed, with the requisite amount of postage stamps thereon, and deposited in the United States post office. In addition there shall be published a legal description of the infestation control district at least once a week for two consecutive weeks in one or more newspapers having a general circulation in the county, or counties, in which the infestation control district is situated. [Amended by 1955 c 116 §1; 1967 c.87 §2]

527.350 State Forester to eradicate infestation if owner fails to act; exceptions. If an owner so notified, fails, refuses, neglects or is unable to undertake compliance with the requirements of the notice within the time stated therein, the State Forester shall, using such funds as are made available, alone, or in cooperation with the owners involved, apply measures of infestation control approved by the State Board of Forestry on lands within such district, and to any trees, timber, plants or shrubs therein, harboring or which may harbor the forest insects or forest tree diseases. However, the State Forester shall not proceed with the destruction within the infestation control district so long as an owner notified as provided in ORS 527.340 proceeds within the time designated in the notice and continues in good faith thereafter to destroy the forest insect pests and forest tree diseases upon the timberlands or timber in a manner approved by the State Board of Forestry. Nor shall the State Forester proceed with the destruction of forest insect pests or forest tree diseases upon the timberlands or timber of an owner in an infestation control district who is a member of a cooperative association of timberland or timber owners which actively engages in the destruction and control of the forest insect pests and forest tree diseases, using methods

approved by the State Board of Forestry.
[Amended by 1967 c.87 §3]

527.360 Costs of eradication; state may contribute; unpaid costs to be charge against timber; collection of charge. Upon completion of any work authorized and performed under the provisions of ORS 527.350, the State Forester shall prepare a certified statement of the expenses necessarily incurred in performing the work of eradicating the forest insects or forest tree diseases. The state may assist in the payment of control costs from funds available for that purpose and in amounts to be determined by the State Board of Forestry. The balance of the expenses, after deducting the sum of such amounts as may be contributed by the state, the Federal Government or any other agencies or persons to defray control costs, shall constitute a charge against the timberlands or timber involved and shall be collected in the same manner as forest patrol assessments under the provisions of ORS chapter 477. [Amended by 1967 c.87 §4]

527.370 Disposition of receipts. All moneys collected under ORS 527.360, together with such moneys as have been and may be appropriated by the legislature for the purposes of ORS 527.310 to 527.400, and with such moneys as may be contributed by the Federal Government or any agencies or persons, shall be paid into the State Treasury, credited to the General Fund and available for general governmental expenses. [Amended by 1953 c.15 §3; 1955 c.116 §2; 1957 c.83 §11; 1967 c.34 §5]

527.380 Dissolution of infestation control districts. Whenever the State Board of Forestry determines that forest insect pest or forest tree disease control work within the designated infestation control district is no longer necessary or feasible, the board by resolution may dissolve the district.

527.390 [Amended by 1957 c.83 §12; repealed by 1967 c.34 §8]

527.400 State Forester to employ assistants, purchase equipment and award contracts. The State Forester may employ assistants and personnel and purchase equipment and supplies required to accomplish the purposes of ORS 527.310 to 527.400, and also may enter into and award, subject to any applicable provisions of ORS 527.510, all contracts in the name of the State Board of Forestry as are necessary for control and destruction of forest insect pests and forest tree diseases.

527.410 [Repealed by 1957 c.83 §26]

527.420 [Repealed by 1957 c.83 §26]

527.430 [Repealed by 1957 c.83 §26]

AERIAL SPRAYING OF FOREST LANDS

527.510 Contractor engaging in aerial spraying of forest lands with insecticides must furnish proof of financial responsibility; federal agency provisions. (1) Any contract for the aerial spraying of forest lands with insecticides entered into under the provisions of ORS 527.400 shall not be executed until and unless the contractor files with the State Forester proof of financial responsibility which may consist of a deposit of money, certified check, liability insurance or surety bond, corporate or otherwise, in the sum of \$10,000 to indemnify any landowner for damages to lands or crops of the landowner caused by the wilful or negligent operation of aircraft of the contractor while engaged in such spraying. Any person whose lands or crops are so damaged shall have a right of action against such contractor and the underwriter of liability insurance or the surety upon such bond or security. The action shall be commenced within two years of the date on which the wilful or negligent operation occurred, and if no action is filed within that time the contractor shall be relieved of liability and the policy of insurance canceled or the surety bond or security withdrawn.

(2) Before entering into any cooperative agreement with any agency of the United States under which the agency undertakes the spraying of forest lands, the State Forester and the State Board of Forestry shall urgently request the federal agency to provide for similar protection from damages in any aerial spraying contracts entered into by it.

527.520 [Repealed by 1975 c.771 §33]

527.530 [Repealed by 1975 c.302 §15]

527.540 Operation of aircraft in violation of ORS 527.510 prohibited. No person shall operate an aircraft in violation of ORS 527.510.

OREGON FOREST PRACTICES ACT

527.610 Short title. ORS 527.610 to 527.730 and 527.990 (1) are known as the Oregon Forest Practices Act. [Formerly 527.010]

527.620 Definitions for ORS 527.610 to 527.730. As used in ORS 527.610 to 527.730, 527.735, 527.990 and 527.992:

(1) "State Forester" means the State Forester or the duly authorized representative of the State Forester.

(2) "Operator" means any person, including a landowner or timber owner, who conducts an operation.

(3) "Board" means the State Board of Forestry.

(4) "Forest land" means land which is used for the growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied. Forest tree species does not include Christmas trees on land used solely for the production of cultured Christmas trees as defined in ORS 215.203 (3).

(5) "Forest practice" means any operation conducted on or pertaining to forest land, including but not limited to:

- (a) Reforestation of forest land;
- (b) Road construction and maintenance;
- (c) Harvesting of forest tree species;
- (d) Application of chemicals; and
- (e) Disposal of slash.

(6) "Operation" means any commercial activity relating to the growing or harvesting of forest tree species.

(7) "Landowner" means any individual, combination of individuals, partnership, corporation or association of whatever nature that holds an ownership interest in forest land, including the state and any political subdivision thereof.

(8) "Timber owner" means any individual, combination of individuals, partnership, corporation or association of whatever nature, other than a landowner, that holds an ownership interest in any forest tree species on forest land.

(9) "Written plan" means a plan submitted by an operator, for written approval by the State Forester, which describes how the operation will be conducted, including the means to protect resource sites described in ORS 527.710 (3)(a), if applicable. [1971 c.316 §3; 1987 c.919 §9]

527.630 Policy. (1) Forests make a vital contribution to Oregon by providing jobs, products, tax base and other social and economic benefits, by helping to maintain forest tree species, soil, air and water resources and by providing a habitat for wildlife and aquatic life. Therefore, it is declared to be the public policy of the State of Oregon to encourage economically efficient forest practices that assure the continuous growing and harvesting of forest tree species and the maintenance of forest land for such purposes as the leading use on privately owned land, consistent with sound management of soil, air, water and fish and wildlife resources that assures the continuous benefits of those resources for future generations of Oregonians.

(2) It is recognized that operations on forest land are already subject to other laws and to regulations of other agencies which deal primarily with consequences of such operations rather than the manner in which operations are conducted. It is further recognized that it is essential to avoid uncertainty and confusion in enforcement and implementation of such laws and regulations and in planning and carrying out operations on forest lands.

(3) To encourage forest practices implementing the policy of ORS 527.610 to 527.730 and 527.990, it is declared to be in the public interest to vest in the board exclusive authority to develop and enforce state-wide and regional rules pursuant to ORS 527.710 and to coordinate with other state agencies and local governments which are concerned with the forest environment. [1971 c.316 §4; 1987 c.919 §10]

527.640 Forest regions. The board shall establish a number of forest regions, but not less than three, necessary to achieve the purposes described in ORS 527.630. [1971 c.316 §6]

527.650 Forest practice committees; members; qualifications; appointment; terms. (1) The board shall establish a forest practice committee for each forest region established pursuant to ORS 527.640. Each such committee shall consist of nine members, a majority of whom must reside in the region. Members of each committee shall be qualified by education or experience in natural resource management and not less than two-thirds of the members of each committee shall be private landowners, private timber owners or authorized representatives of such landowners or timber owners who regularly engage in operations.

(2) Members of forest practice committees shall be appointed by the board for three-year terms. Appointments under this subsection shall be made by the board within 60 days after July 1, 1972. If there is a vacancy for any cause, the board shall make an appointment to become immediately effective for the unexpired term. Each such committee shall select a chairman from among its members. A staff member of the State Forestry Department shall be designated by the State Forester to serve as the secretary, without voting power, for each such committee.

(3) Notwithstanding the terms of the committee members specified by subsection (2) of this section, of the members first appointed to each such committee:

(a) Three shall serve for a term of one year.

(b) Three shall serve for a term of two years.

(c) Three shall serve for a term of three years. [1971 c.316 §7]

527.660 Committees to review rules. Each forest practice committee shall review proposed forest practice rules in order to assist the board in developing rules appropriate to the forest conditions within its region. Committee recommendations are advisory only and the committees need not be consulted prior to the adoption of any forest practice rule. [1971 c.316 §8, 1987 c.919 §11]

527.665 Notice of reforestation requirements to be given in forest land transfers; effect of failure to notify; damages. (1) In any transaction for the conveyance of an ownership interest in forest land, the transferor must provide to the transferee, prior to the date of execution of the conveyance, written notice of any reforestation requirements imposed upon the land pursuant to the Oregon Forest Practices Act.

(2) The failure of the transferor to comply with subsection (1) of this section does not invalidate an instrument of conveyance executed in the transaction. However, for any such failure the transferee may bring against the transferor an appropriate action to recover the costs of complying with the reforestation requirements. If the transferee prevails in any such action, the transferee is entitled to costs and disbursements and reasonable attorney fees at trial and on appeal. [1983 c.759 §4]

527.670 Commencement of operations; when notice and written plan required; appeal of plan. (1) The board shall designate the types of operations for which notice shall be required under this section.

(2) The board shall determine by rule what types of operations require a written plan to be approved by the State Forester.

(3) The board's determination under subsection (2) of this section shall require a written plan for operations within:

(a) One hundred feet of a Class 1 stream, unless the board, by rule, provides that a written plan is not required because there is no reasonable likelihood that such operations would damage a resource described in ORS 527.710 (2), within the riparian management area; or

(b) Three hundred feet of a resource site inventoried pursuant to ORS 527.710 (3)(a).

(4) The distances set forth in paragraphs (a) and (b) of subsection (3) of this section are solely for the purpose of defining an area within which a hearing may be requested under ORS 527.700 and not the area to be

protected by the board's rules adopted pursuant to ORS 527.710 (3)(c).

(5) For the purpose of determining the distances set forth in paragraphs (a) and (b) of subsection (3) of this section "site" means the specific resource site and not any additional buffer area.

(6) An operator, timber owner or landowner, before commencing an operation, shall notify the State Forester. The notification shall be on forms provided by the State Forester and shall include the name and address of the operator, timber owner and landowner, the legal description of the operating area, and any other information considered by the State Forester to be necessary for the administration of the rules promulgated by the board pursuant to ORS 527.710. Promptly upon receipt of such notice, the State Forester shall send a copy of the notice to whichever of the operator, timber owner or landowner did not submit the notification. The State Forester shall also send to the operator, the timber owner and the landowner a copy of the rules applicable to the proposed operation.

(7) An operator, timber owner or landowner, whichever filed the original notification, shall notify the State Forester of any subsequent change in the information contained in the notification.

(8) Within three working days of receipt of a notice or a written plan filed under subsection (6) or (7) of this section, the State Forester shall send a copy of the notice or written plan to the Department of Revenue, the county assessor for the county in which the operation is located and persons who requested of the State Forester in writing that they be sent copies of notice and written plan and who have paid any applicable fee established by the State Forester for such service. The State Forester may establish a fee for sending copies of notices and written plans under this subsection not to exceed the actual and reasonable costs.

(9) Persons may submit written comments pertaining to the operation to the State Forester within 14 calendar days of the date the notice or written plan was filed with the State Forester under subsection (2), (6) or (7) of this section. Notwithstanding the provisions of this subsection, the State Forester may waive any waiting period for operations not requiring a written plan under subsection (3) of this section.

(10) Whenever an operator, timber owner or landowner is required to submit a written plan of operations to the State Forester under subsection (3) of this section, the State Forester shall not approve any such written plan until 14 calendar days following the

date the written plan was filed with the State Forester. An operation may commence upon approval of the written plan.

(11)(a) The State Forester shall issue a decision on a written plan within three working days after the end of the 14-day period described in subsection (10) of this section.

(b) If the State Forester fails to issue a decision within five working days after the end of the 14-day period described in subsection (10) of this section, the written plan shall be deemed approved and the operation may be commenced.

(12) When the operation is required to have a written plan under subsection (3) of this section and comments have been timely filed under subsection (9) of this section pertaining to the operation requiring a written plan, the State Forester shall:

(a) Send a copy of the approved written plan to persons who submitted timely written comments under subsection (9) of this section pertaining to the operation; and

(b) Send to the operator, timber owner and landowner a copy of the approved written plan and copies of all timely comments submitted under subsection (9) of this section. [1971 c.316 §9; 1987 c.919 §12]

527.680 Violation by operator; citation; order to cease violation; order to repair damage; temporary order where violation continuing; service on operator. (1) Whenever the State Forester determines that an operator has committed a violation under ORS 527.990 (1), the State Forester may issue and serve a citation upon the operator or authorized representative. The State Forester shall cause a copy of the citation to be mailed or delivered to the timber owner and landowner. Whenever the State Forester determines that the landowner has failed to comply with the reforestation rules under ORS 527.710, the State Forester may issue and serve a citation upon the landowner or authorized representative. Each citation issued under this section shall specify the nature of the violation charged and any damage or unsatisfactory condition that has occurred as the result of such violation.

(2) Whenever a citation is served pursuant to subsection (1) of this section, the State Forester:

(a) Shall issue and serve upon the landowner or operator or authorized representative an order directing that the landowner or operator cease further violation. If the order is served upon an operator, the State Forester shall cause a copy of such order to be mailed or delivered to the timber owner and landowner; and

(b) May issue and serve an order upon the landowner or operator and shall cause a copy of such order to be mailed or delivered to the timber owner and landowner, directing the landowner or operator, where practical and economically feasible, to make reasonable efforts to repair the damage or correct the unsatisfactory condition specified in the citation within a period specified by the State Forester.

(3) In the event the order issued under paragraph (a) of subsection (2) of this section has not been complied with, and the violation specified in such order is resulting in continuing damage, the State Forester by temporary order, may direct the landowner or operator to cease any further activity in that portion of the operation that is resulting in such damage. Such temporary order shall be in effect until the date of the expiration of the period as prescribed in subsection (4) of this section or until the date that the violation ceases, whichever date occurs first.

(4) A temporary order issued under subsection (3) of this section shall be served upon the landowner or operator or authorized representative, and the State Forester shall cause a copy of such temporary order to be mailed or delivered to the operator, timber owner and landowner. If requested by the operator, timber owner or landowner, the board, following the appeal procedures of ORS 527.700, must hold a hearing on the temporary order within five working days after the receipt by the board of the request. A temporary order issued and served pursuant to subsection (3) of this section shall remain in effect not more than five working days after such hearing unless the order is sooner affirmed, modified or revoked by the board. [1971 c.316 §10; 1983 c.759 §1]

527.683 Notice of violation. (1) No civil penalty prescribed in ORS 527.992 shall be imposed until the person incurring the penalty has received notice in writing from the State Forester specifying the violation. Such notice is in addition to the notice required in ORS 527.687.

(2) The citation issued pursuant to ORS 527.680 (1) and the order issued pursuant to ORS 527.680 (2)(b) shall each constitute the notice required by subsection (1) of this section. [1987 c 919 §25]

Note: 527.683 to 527.687 were enacted into law by the Legislative Assembly and added to and made a part of chapter 527 but were not added to or made a part of 527.610 to 527.730 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

527.685 Civil penalty considerations. (1) The board shall by rule establish the amount of civil penalty that may be imposed for a particular violation. No civil penalty shall exceed \$5,000 per violation.

(2) In imposing a penalty authorized by this section, the State Forester may consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules, orders and permits pertaining to the Oregon Forest Practices Act.

(c) The gravity and magnitude of the violation.

(d) Whether the violation was repeated or continuous.

(e) Whether the cause of the violation was an unavoidable accident, negligence or an intentional act.

(f) The size and type of ownership of the operation.

(g) Any relevant rule of the board.

(h) The violator's cooperativeness and efforts to correct the violation.

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the board determines to be proper and consistent with the public benefit. Upon the request of the person incurring the penalty, the board shall consider evidence of the economic and financial condition of the person in determining whether a penalty shall be remitted or mitigated.

(4) The board, by rule, may delegate to the State Forester upon such conditions as deemed necessary, all or part of the authority of the board provided in subsection (3) of this section to assess, remit or mitigate civil penalties. [1987 c 919 §26]

Note: See note under 527.683.

527.687 Notice of civil penalty; hearing; civil penalty as judgment. (1) Subject to the notice provisions of ORS 527.683, any civil penalty imposed under ORS 527.992 shall become due and payable when the person incurring the penalty receives a notice of the penalty in writing from the State Forester. The notice referred to in this section shall be served personally or sent by registered or certified mail and shall include:

(a) A reference to the particular sections of the statute, rule, standard, order or permit involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the party's right to request a hearing.

(2) The person to whom the notice is addressed shall have 20 days from the date of

service or mailing of the notice in which to make written application for a hearing before the board, after which time the notice becomes a final order. Such a hearing shall be held at the next regularly scheduled meeting of the board as provided in ORS 526.016 (3).

(3) In no case shall a hearing be held less than 45 days from the date of mailing of the notice of penalty to allow the party to prepare testimony.

(4) All hearings shall be conducted pursuant to the applicable provisions of ORS 183.310 to 183.550.

(5) The board, by rule, may delegate to a hearings officer appointed by the State Forester, upon such conditions as deemed necessary, all or part of the authority to conduct hearings required by subsection (2) of this section.

(6) Unless the amount of penalty is paid within 10 days after the order becomes final, the order shall constitute a judgment and may be recorded with the county clerk in any county of this state. The clerk shall record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record. The penalty provided in the order so recorded becomes a lien upon the title to any interest in real property situated in the county and owned by the person against whom the order is entered. Execution may be issued upon the order in the same manner as execution upon a judgment of a court record.

(7) All civil penalties recovered under ORS 197.180, 197.270, 197.825, 215.050, 477.090, 477.440, 477.455, 477.460, 526.009, 526.016, 527.620, 527.630, 527.660, 527.670, 527.683 to 527.687, 527.700 to 527.722, 527.735 and 527.992 shall be paid to the General Fund. [1987 c.919 §27]

Note: See note under 523 683.

527.690 Failure to comply with order to repair damage; estimate of cost of repair; notification; board may order repair completed; cost of repair as lien upon operator, timber owner or landowner. (1) In the event an order issued pursuant to ORS 527.680 (2)(b) directs the repair of damage or correction of an unsatisfactory condition, and if the operator or landowner does not comply with the order within the period specified in such order and the order has not been appealed to the board within 30 days, the State Forester based upon a determination by the forester of what action will best carry out the purposes of ORS 527.630 shall:

(a) Maintain an action in the Circuit Court for Marion County or the circuit court for the county in which the violation occurred for an order requiring the landowner

or operator to comply with the terms of the forester's order or to restrain violations thereof; or

(b) Estimate the cost to repair the damage or the unsatisfactory condition as directed by the order and shall notify the operator, timber owner and landowner in writing of the amount of the estimate. Upon agreement of the operator, timber owner or the landowner to pay the cost, the State Forester may proceed to repair the damage or the unsatisfactory condition. In the event approval of the expenditure is not obtained within 30 days after notification to the operator, timber owner and landowner under this section, the State Forester shall present to the board the alleged violation, the estimate of the expenditure to repair the damage or unsatisfactory condition and the justification for the expenditure.

(2) The board shall review the matter presented to it pursuant to subsection (1) of this section and shall determine whether to authorize the State Forester to proceed to repair the damage or correct the unsatisfactory condition and the amount authorized for expenditure. The board shall afford the operator, timber owner or landowner the opportunity to appear before the board for the purpose of presenting facts pertaining to the alleged violation and the proposed expenditure.

(3) If the board authorizes the State Forester to repair the damage or correct the unsatisfactory condition, the State Forester shall proceed, either with forces of the State Forester or by contract, to repair the damage or correct the unsatisfactory condition. The State Forester shall keep a complete account of direct expenditures incurred, and upon completion of the work, shall prepare an itemized statement thereof and shall deliver a copy to the operator, timber owner and landowner. In no event shall the expenditures exceed the amount authorized by subsection (2) of this section. An itemized statement of the direct expenditures incurred by the State Forester, certified by the State Forester, shall be accepted as prima facie evidence of such expenditures in any proceeding authorized by this section.

(4) The expenditures in cases covered by this section shall constitute a general lien upon the real and personal property of the operator, timber owner and landowner within the county in which the damage occurred. A written notice of the lien, containing a statement of the demand, the description of the property upon which the expenditures were made and the name of the parties against whom the lien attaches, shall be certified under oath by the State Forester and filed in the office of the county clerk of the

county or counties in which the expenditures were made within six months after the date of delivery of the itemized statement referred to in subsection (3) of this section, and may be foreclosed in the manner provided in ORS chapter 88.

(5) Liens provided for in this section shall cease to exist unless suit for foreclosure is instituted within six months from the date of filing under subsection (4) of this section. [1971 c.316 §11; 1981 c.757 §10; 1983 c.28 §1]

527.700 Appeals from orders of State Forester; hearings procedure; stay of operation. (1) Any operator, timber owner or landowner affected by any finding or order of the State Forester issued under ORS 527.610 to 527.730 may request a hearing within 30 days after issuance of the order. The hearing shall be commenced within 14 days after receipt of the request for hearing and a final order shall be issued within 28 days of the request for the hearing unless all parties agree to an extension of the time limit.

(2) The board may delegate to a hearings officer the authority to hear and issue proposed or final orders on matters under this section. Hearings provided under this section shall be conducted as contested case hearings under ORS 183.413 to 183.470. The board may establish such rules as it deems appropriate to carry out the provisions of this section. Appeals from final hearing orders under this section shall be provided in ORS 183.482.

(3) Any person adversely affected or aggrieved by an operation described in subsection (4) of this section may file a written request to the board for a hearing if the person submitted written comments pertaining to the operation within the time limits established under ORS 527.670 (9).

(4) A request for hearing may be filed under subsection (3) of this section only if a written plan was required pursuant to ORS 527.670 (3).

(5) A request for hearing filed under subsection (3) of this section shall be filed within 14 calendar days of the date the written plan was approved. Copies of the complete request shall be served, within the 14-day period, on the operator, timber owner and landowner. The request shall include:

(a) A copy of the written plan on which the person is requesting a hearing;

(b) A copy of the comments pertaining to the operation that were filed by the person requesting the hearing;

(c) A statement that shows the person is adversely affected or aggrieved by the operation and has an interest which is addressed

by the Oregon Forest Practices Act or rules adopted thereunder; and

(d) A statement of facts that establishes that the operation is of the type described in ORS 527.670 (3).

(6) If the board finds that the person making the request meets the requirement of paragraph (c) of subsection (5) of this section, the board shall set the matter for hearing within 14 calendar days after receipt of the request for hearing. The operator, timber owner and landowner shall be allowable parties to the hearing. The person requesting the hearing may raise, in the hearing, only those issues that the person raised in written comments filed under ORS 527.670 (9) relating to conformity with the rules of the board. A final order shall be issued rescinding, affirming or modifying the written plan within 28 days after the request for hearing was filed, unless all parties agree to an extension of the time limit.

(7) The board may award reasonable attorney fees and expenses to each of the prevailing parties against any other party who the board finds presented a position without probable cause to believe the position was well-founded, or made a request primarily for a purpose other than to secure appropriate action by the board.

(8)(a) Upon the written request of a person requesting a hearing under subsection (3) of this section, a stay of the operation subject to the hearing may be granted upon a showing that:

(A) Commencement or continuation of the operation will constitute a violation of the rules of the board;

(B) The person requesting the stay will suffer irreparable injury if the stay is not granted; and

(C) The requirements of subsections (3), (4) and (5) of this section are met.

(b) If the board grants the stay, it shall require the person requesting the stay to give an undertaking which may be in the amount of the damages potentially resulting from the stay, but in any event shall not be less than \$15,000. The board may impose other reasonable requirements pertaining to the grant of the stay. The board shall limit the effect of the stay to the specific geographic area or elements of the operation for which the person requesting the stay has demonstrated a violation of the rules and irreparable injury under paragraph (a) of this subsection.

(c) If the board affirms the written plan pertaining to the operation for which the stay was granted, the board shall award reasonable attorney fees and actual damages in

favor of each of the prevailing parties, to the extent incurred by each, against the person requesting the stay.

(9) If the board disapproves or changes the written plan as submitted and approved by the State Forester pertaining to any operation, the board shall award reasonable attorney fees and costs against the state in favor of each of the prevailing parties.

(10) As used in this section, "person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character. [Formerly 527.240; 1983 c.28 §2, 1987 c.919 §13]

527.710 Duties and powers of board; rules to protect resources; inventory for resource protection; consultation with other agencies required. (1) In carrying out the purposes of ORS 527.610 to 527.730 and 527.990 (1), the board shall adopt, in accordance with applicable provisions of ORS 183.310 to 183.550, rules to be administered by the State Forester establishing minimum standards for forest practices in each region or subregion.

(2) The rules shall assure the continuous growing and harvesting of forest tree species. Consistent with ORS 527.630, the rules shall provide for the overall maintenance of the following resources:

(a) Air quality;

(b) Water resources, including but not limited to sources of domestic drinking water;

(c) Soil productivity; and

(d) Fish and wildlife.

(3)(a) In addition to its rulemaking responsibilities under subsection (2) of this section, the board shall collect and analyze the best available information and establish inventories of the following resource sites needing protection:

(A) Threatened and endangered fish and wildlife species identified on lists that are adopted, by rule, by the State Fish and Wildlife Commission or are federally listed under the Endangered Species Act of 1973 as amended;

(B) Sensitive bird nesting, roosting and watering sites;

(C) Biological sites that are ecologically and scientifically significant; and

(D) Significant wetlands.

(b) The board shall determine whether forest practices would conflict with resource sites in the inventories required by paragraph (a) of this subsection. If the board determines that one or more forest practices would conflict with resource sites in the in-

ventory, the board shall consider the consequences of the conflicting uses and determine appropriate levels of protection.

(c) Based upon the analysis required by paragraph (b) of this subsection, and consistent with the policies of ORS 527.630, the board shall adopt rules appropriate to protect resource sites in the inventories required by paragraph (a) of this subsection.

(4) Before adopting rules under subsection (1) of this section, the board shall consult with other agencies of this state or any of its political subdivisions that have functions with respect to the purposes specified in ORS 527.630 or programs affected by forest operations. Agencies and programs subject to consultation under this subsection include, but are not limited to:

(a) Air and water pollution programs administered by the Department of Environmental Quality under ORS 468.700 to 468.778, 468.780, 468.815 and 477.515 to 477.532;

(b) Mining operation programs administered by the Department of Geology and Mineral Industries under ORS 516.010 to 516.130 and ORS chapter 517;

(c) Game fish and wildlife, commercial fishing, licensing, wildlife and bird refuge and fish habitat improvement tax incentive programs administered by the State Department of Fish and Wildlife under ORS 272.060, 316.084, 501.005 to 501.540 and ORS chapters 496, 498, 506 and 509;

(d) Park land, Willamette River Greenway, scenic waterway and recreation trail programs administered by the State Parks and Recreation Department under ORS 358.475 to 358.565, 390.310 to 390.368, 390.805 to 390.925, 390.950 to 390.990 and ORS 390.121;

(e) The programs administered by the Columbia River Gorge Commission under Public Law 99-663 and ORS 196.110 and 196.150;

(f) Removal and fill, natural heritage conservation and natural heritage conservation tax incentive programs administered by the State Land Board and the Division of State Lands under ORS 196.670 to 196.765, 273.553 to 273.591, 307.550, 307.560 and 541.700 to 541.990;

(g) Federal Safe Drinking Water Act programs administered by the Health Division under ORS 448.273 to 448.990;

(h) Natural heritage conservation programs administered by the Natural Heritage Advisory Council under ORS 273.553 to 273.591, 307.550 and 307.560;

(i) Open space land tax incentive programs administered by cities and counties under ORS 308.740 to 308.790; and

(j) Water resources programs administered by the Water Resources Department under ORS 536.220 to 536.540.

(5) In carrying out the provisions of subsection (4) of this section, the board shall consider and accommodate the rules and programs of other agencies to the extent deemed by the board to be appropriate and consistent with the purposes of ORS 527.630.

(6) The board shall adopt rules to meet the purposes of another agency's regulatory program where it is the intent of the board to administer the other agency's program on forest land and where the other agency concurs by rule. An operation performed in compliance with the board's rules shall be deemed to comply with the other agency's program.

(7) The board may enter into cooperative agreements or contracts necessary in carrying out the purposes specified in ORS 527.630. [1971 c.316 §5, 1987 c.919 §14a; 1989 c.171 §69; 1989 c.904 §38]

Note: Section 32a, chapter 919, Oregon Laws 1987, as amended by section 1, chapter 184, Oregon Laws 1989, provides:

Sec. 32a. (1) No later than November 1, 1988, the State Board of Forestry shall prepare and submit to the President of the Senate, the Speaker of the House of Representatives and the Joint Legislative Committee on Land Use a report on:

(a) The board's progress toward completion of the requirements of ORS 527.710; and

(b) Enforcement of the provisions of ORS 527.610 to 527.730 including but not limited to:

(A) The number of violations for which a citation was issued;

(B) The number and amount of civil penalties imposed;

(C) The reasons for the imposition of the penalty and the amount of the penalty in each particular case;

(D) The number of instances in which the State Forester requested action of the district attorney;

(E) The number of cases accepted by the district attorney;

(F) The disposition of the cases accepted by the district attorney; and

(G) The average caseload for each forest practice officer.

(2) Not later than November 1, 1991, the board shall submit to the President of the Senate, the Speaker of the House of Representatives and the Joint Legislative Committee on Land Use a final report of completion of the requirements set forth in ORS 527.710. [1987 c.919 §32a, 1989 c.184 §1]

Note: Section 2, chapter 184, Oregon Laws 1989, provides:

Sec. 2. The State Board of Forestry shall report to the Joint Legislative Committee on Land Use, on a schedule established by the committee, on the board's findings as required by ORS 527.710 (3)(a)(A) to (D) and section 32a, chapter 919, Oregon Laws 1987, as amended by section 1 of this Act. [1989 c.184 §2]

527.715 Rules to establish standards and procedures. The board shall establish, by rule, the standards and procedures to im-

plement the provisions of ORS 197.180, 197.270, 197.825, 215.050, 477.090, 477.440, 477.455, 477.460, 526.009, 526.016, 527.620, 527.630, 527.660, 527.670, 527.683 to 527.687, 527.700 to 527.722, 527.735 and 527.992. [1987 c.919 §28]

Note: 527.715 was enacted into law by the Legislative Assembly and was added to and made a part of chapter 527 but was not added to or made a part of 527.610 to 527.730 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

527.720 [1971 c.316 §5a; repealed by 1987 c.919 §15 (527.721 enacted in lieu of 527.720)]

527.721 Coordination with state and local agencies for review and comment on operations. By rule or by cooperative agreement entered into following an opportunity for public comment before the board, the board shall provide for coordination with appropriate state and local agencies regarding procedures to be followed for review and comment on individual forest operations. [1987 c.919 §16 (enacted in lieu of 527.720)]

527.722 Restrictions on local government adoption of rules regulating forest operations; exceptions. (1) Notwithstanding any provisions of ORS chapters 196, 197, 215 and 227, and except as provided in subsections (2) and (3) of this section, no unit of local government shall adopt any rules, regulations or ordinances or take any other actions that prohibit, limit, regulate, subject to approval or in any other way affect forest practices on forest lands located outside of an acknowledged urban growth boundary.

(2) Nothing in subsection (1) of this section prohibits local governments from adopting and applying a comprehensive plan or land use regulations to forest land to allow, prohibit or regulate:

(a) The establishment or alteration of structures other than temporary onsite structures which are auxiliary to and used during the term of a particular forest operation;

(b) The siting or alteration of dwellings;

(c) Physical alterations of the land, including but not limited to those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities, when such uses are not auxiliary to forest practices;

(d) Partitions and subdivisions of the land; or

(e) Nothing in this subsection shall prohibit a local government from enforcing the provisions of ORS 455.310 to 455.715 and the rules adopted thereunder.

(3) Counties can prohibit forest practices on land for which an acknowledged exception

to an agricultural or forest land goal has been taken. [1979 c.400 §2, 1987 c.919 §17]

527.724 Forest operations to comply with air and water pollution control rules and standards; effect of violation. Any forest operations on forest lands within this state shall be conducted in full compliance with the rules and standards of the Environmental Quality Commission relating to air and water pollution control. In addition to all other remedies provided by law, any violation of those rules or standards shall be subject to all remedies and sanctions available under statute or rule to the Department of Environmental Quality or the Environmental Quality Commission. [1979 c.400 §3]

527.725 [1975 c.185 §5, repealed by 1975 c.185 §6]

527.726 [1979 c.400 §4; 1983 c.827 §55; repealed by 1987 c.919 §29]

527.730 Conversion of forest land to other uses. Nothing in ORS 527.610 to 527.730 and 527.990 (1) shall prevent the conversion of forest land to any other use. [1971 c.316 §12]

527.735 Forest Trust Land Advisory Committee; membership; terms; advisory function. (1) A Forest Trust Land Advisory Committee is established to be composed of three members, appointed by the Governor, who are elected officials of county governing bodies from counties in which lands subject to ORS 530.010 to 530.170 are located.

(2) The term of office of a member is four years. Appointments may be made from a list submitted by the Association of Oregon Counties.

(3) Members may receive reimbursement for actual and reasonable traveling and other expenses necessarily incurred in performing official duties. This reimbursement shall not be deemed lucrative.

(4) The committee shall advise the board and the State Forester on the management of lands subject to the provisions of ORS 530.010 to 530.170 and on other matters in which counties may have a responsibility pertaining to forest land. The board and the State Forester shall consult with the committee with regard to such matters. [1987 c.919 §6a]

Note: 527.735 was enacted into law by the Legislative Assembly and was added to and made a part of chapter 527 but was not added to or made a part of 527.610 to 527.730 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

FOREST PRACTICE AS NUISANCE

527.800 Definitions for ORS 527.805 and 527.810. As used in ORS 527.800 to 527.810:

(1) "Forest land" means land that is:

(a) Assessed for taxation under ORS 321.352, 321.705 to 321.765 or 321.805 to 321.825; or

(b) Classified pursuant to land use laws in a zone for which one of the primary uses is the production of forest products for commercial purposes.

(2) "Forest practice" includes, but is not limited to, site preparation, timber harvest, slash disposal, road construction and maintenance, tree planting, precommercial thinning, release, fertilization, animal damage control and insect and disease control. [1985 c.347 §1]

527.805 Certain forest practices not private or public nuisance; effect on local ordinances; exceptions. (1) A forest practice conducted on forest land in accordance with ORS chapters 477 and 527 shall not be declared or held to be a private or public nuisance.

(2) Any local government ordinance adopted after September 20, 1985, that declares a forest practice to be a nuisance or that provides for abatement of the forest practice as a nuisance is invalid with respect to that forest practice.

(3) Subsections (1) and (2) of this section do not apply:

(a) When a nuisance results from the negligent conduct of a forest practice;

(b) To the growing, raising, harvesting or transporting of infested, infected or diseased forest products that are declared a nuisance by statute or pursuant to rules adopted by the State Forestry Department;

(c) City ordinances adopted in accordance with ORS 527.722; or

(d) To any forest practice conducted in violation of a solar energy easement that complies with ORS 105.880 to 105.890. [1985 c.347 §2]

527.810 Effect on other remedies and laws. (1) The provisions of ORS 527.805 shall not impair the right of any person or governmental body to pursue any remedy authorized by statute, ordinance or administrative rule that:

(a) Concerns matters other than a nuisance;

(b) Does not expressly purport to prohibit or regulate forest practices as a nuisance; or

(c) Prohibits or regulates the use or physical condition of facilities that adversely affect public health or safety, regardless of whether it purports to prohibit or regulate a situation as a nuisance.

(2) The provisions of ORS 527.805 do not supersede:

(a) Any existing or future statute.

(b) Any ordinance or administrative rule that names specific activities or occurrences as nuisances and that was in effect on September 20, 1985. [1985 c.347 §3]

PENALTIES

527.990 Criminal penalties. (1) Violation of ORS 527.670 or any rule promulgated under ORS 527.710 is punishable, upon conviction, as a misdemeanor. Each day of operation in violation of an order issued under ORS 527.680 (3) shall be deemed to be a separate offense.

(2) Violation of ORS 527.260 (1) is a misdemeanor. Violation of ORS 527.260 is punishable, upon conviction, by a fine of not more than \$250 or by imprisonment in the county jail for not more than 60 days, or both.

(3) Violation of ORS 527.540 is punishable, upon conviction, by a fine of not more than \$100 or by imprisonment in the county jail for not more than 30 days, or both. [Amended by 1953 c.262 §2; 1971 c.316 §14; 1987 c.919 §32]

527.992 Civil penalties. (1) In addition to any other penalty provided by law, any person who fails to comply with any of the following may incur a civil penalty in the amount adopted under ORS 527.685:

(a) The requirements of ORS 527.670.

(b) The terms or conditions of any order of the State Forester issued in accordance with ORS 527.680.

(c) Any rule or standard of the board adopted or issued pursuant to ORS 527.710.

(d) Any term or condition of a written waiver, or prior approval granted by, or of a written plan of operation accepted by the State Forester pursuant to the rules adopted under ORS 527.710.

(2) Imposition or payment of a civil penalty under this section shall not be a bar to actions alleging trespass under ORS 105.810, nor to actions under ORS 161.635 or 161.655 seeking to recover an amount based on the gain resulting from individual or corporate criminal violations. [1987 c.919 §24]

Note: 527.992 was enacted into law by the Legislative Assembly, was added to and made a part of ORS chapter 527 but was not added to or made a part of any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.