

OREGON LEGISLATIVE ASSEMBLY—1973 REGULAR SESSION

Corrected
Enrolled
Senate Bill 101

Sponsored by Senators MACPHERSON, MEEKER,
Representatives S. JOHNSON, MAGRUDER, MARKHAM, D. STULTS

CHAPTER.....

AN ACT

Relating to farm lands; creating new provisions; and amending ORS 215.130, 215.203, 215.213 and 308.395.

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

SECTION 1. The Legislative Assembly finds and declares that:

(1) Open land used for agricultural use is an efficient means of conserving natural resources that constitute an important physical, social, aesthetic and economic asset to all of the people of this state, whether living in rural, urban or metropolitan areas of the state.

(2) The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation.

(3) Expansion of urban development into rural areas is a matter of public concern because of the unnecessary increases in costs of community services, conflicts between farm and urban activities and the loss of open space and natural beauty around urban centers occurring as the result of such expansion.

(4) Exclusive farm use zoning as provided by law, substantially limits alternatives to the use of rural land and, with the importance of rural lands to the public, justifies incentives and privileges offered to encourage owners of rural lands to hold such lands in exclusive farm use zones.

Section 2. ORS 215.130 is amended to read:

215.130. (1) Any ordinance adopted under ORS 215.010 to 215.190 shall be a local law within the meaning of, and subject to, ORS 254.310.

(2) No ordinance adopted under ORS 215.010 to 215.190 shall apply to the area inside incorporated cities of the county, except as provided in ORS 227.310 and except as to cities not regularly operating as such through elected governmental officials.

(3) Ordinances adopted under ORS 215.010 to 215.190 may apply to state, school district and other publicly owned or occupied property, except property of the United States.

[(4) *Land within a farm use zone which is used exclusively for farm purposes shall be exempt from regulation under a zoning ordinance enacted by authority of ORS 215.010 to 215.190.*]

[(5)] (4) The lawful use of any building, structure or land at the time of the enactment of any zoning regulation or amendment thereto, may be continued as such although not in conformity with the zoning regulation, but such nonconforming uses shall not be increased, changed or resumed

after a period of interruption or abandonment except in conformity with such provisions as the zoning regulations may provide.

Section 3. ORS 215.203 is amended to read:

215.203. (1) Zoning ordinances may be adopted under ORS 215.010 to 215.190 to zone designated areas of land within the county as farm use zones. Land within such zones shall be used exclusively for farm use except as otherwise provided in ORS 215.213. Farm use zones shall be established only when such zoning is consistent with the over-all plan of development of the county.

(2) (a) As used in this section, "farm use" means the current employment of land including that portion of such lands under buildings supporting accepted farming practices for the purpose of obtaining a profit in money by raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation and storage of the products raised on such land for man's use and animal use and disposal by marketing or otherwise. It does not include the use of land subject to the provisions of ORS chapter 321, or to the construction and use of dwellings [and other buildings] customarily provided in conjunction with the farm use.

[(b) Except as limited by paragraph (c) of this subsection, farm use land shall not be regarded as being used for the purpose of obtaining a profit in money if the whole parcel has not produced a gross income from farm uses of \$500 per year for three of the five calendar years immediately preceding the assessment day of the tax year for which farm use is claimed by the owner or allowed by the assessor, notwithstanding that such land is included within the boundaries of a farm use zone. In case of question, the burden of proving the gross income of a parcel of land for the years designated in this paragraph is placed upon the owner of the land.]

[(c)] (b) "Current employment" of land for farm use includes (A) land subject to the soil-bank provisions of the Federal Agricultural Act of 1956, as amended (P. L. 84-540, 70 Stat. 188); (B) land lying fallow for one year as a normal and regular requirement of good agricultural husbandry; and (C) land planted in orchards or other perennials prior to maturity. [for bearing crops; and (D) farm wood lots of less than 20 acres appurtenant to farm use land which fulfills the requirements of paragraph (b) of this subsection. The acres of land within the categories described in this paragraph shall not be subject to the requirements of paragraph (b) of this subsection.]

(c) As used in this subsection, "accepted farming practice" means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.

Section 4. ORS 215.213 is amended to read:

215.213. (1) The following nonfarm uses may be established in any area zoned under ORS 215.010 to 215.190 for farm use:

[(1)] (a) Public or private schools.

[(2)] (b) Churches.

[(3)] Golf courses.]

(c) The propagation or harvesting of a forest product.

[(4)] Parks, playgrounds or community centers owned and operated by a governmental agency or a nonprofit community organization.]

(d) Utility facilities necessary for public service, except commercial facilities for the purpose of generating power for public use by sale.

(e) The dwellings and other buildings customarily provided in con-

junction with farm use, referred to in paragraph (a) of subsection (2) of ORS 215.203.

(2) The following nonfarm uses may be established, subject to the approval of the governing body of the county, in any area zoned under ORS 215.010 to 215.190 for farm use:

- (a) Commercial activities that are in conjunction with farm use.
- (b) Operations conducted for the exploration, mining and processing of geothermal resources as defined by subsection (4) of ORS 522.010, aggregate and other mineral resources or other subsurface resources.
- (c) Private parks, playgrounds, hunting and fishing preserves and campgrounds.
- (d) Parks, playgrounds or community centers owned and operated by a governmental agency or a nonprofit community organization.
- (e) Golf courses.
- (f) Commercial utility facilities for the purpose of generating power for public use by sale.

(3) Single-family residential dwellings, not provided in conjunction with farm use, may be established, subject to the approval of the governing body of the county, in any area zoned under ORS 215.010 to 215.190 for farm use upon a finding by the governing body that each such proposed dwelling:

- (a) Is compatible with farm uses described in subsection (2) of ORS 215.203 and is consistent with the intent and purposes set forth in section 1 of this 1973 Act; and
- (b) Does not interfere seriously with accepted farming practices, as defined in paragraph (c) of subsection (2) of ORS 215.203, on adjacent lands devoted to farm use; and
- (c) Does not materially alter the stability of the overall land use pattern of the area; and
- (d) Is situated upon generally unsuitable land for the production of farm crops and livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract; and
- (e) Complies with such other conditions as the governing body of the county considers necessary.

[(5) Utility facilities necessary for public service.]

[(6) The dwellings and other buildings customarily provided in conjunction with farm use, referred to in paragraph (a) of subsection (2) of ORS 215.203.]

SECTION 5. The county assessor shall assess land within an exclusive farm use zone established under ORS 215.010 to 215.190 or 227.210 to 227.310, and which is used exclusively for farm use as defined in subsection (2) of ORS 215.203, at the special assessment provided in subsection (1) of ORS 308.370 until the land becomes disqualified for such assessment by:

- (1) Removal of the special assessment by the assessor upon the discovery that the land is no longer being used as farm land; or
- (2) Removal of the land from any exclusive farm use zone at the request of the owner of the land.

SECTION 6. (1) Except as otherwise provided in subsection (3) of this section, whenever land which has received special assessment as farm use land under subsection (1) of ORS 308.370 thereafter becomes disqualified for such assessment under section 5 of this Act, the assessor shall notify the owner thereof and there shall be added to the tax extended against the land on the next general property tax roll, to be collected and distributed in the same manner as the remainder of the real property tax, a penalty equal to 10 times (or such lesser number of times, corresponding to the years of farm use zoning applicable to such property) the total

amount by which the taxes assessed against the land would have been increased if it had been valued without regard to subsection (1) of ORS 308.370 during the last year beginning after the effective date of this Act in which such farm use assessment was in effect for the land.

(2) The amount determined to be due as a penalty under subsection (1) of this section may be paid to the assessor prior to the completion of the next general property tax roll, pursuant to ORS 311.370.

(3) No penalty shall be imposed under subsection (1) of this section upon an owner of land that has received special assessment as farm use land under subsection (1) of ORS 308.370, if the land becomes disqualified for such special assessment because:

(a) The land is acquired by a governmental agency as a result of the lawful exercise of the power of eminent domain or the threat of imminence thereof; or

(b) The land ceases to be located within the boundaries of an exclusive farm use zone as the result of a change in the boundaries of the zone or removal of the zone following an action by the governing body of the county that was not requested or initiated by the owner of the land.

SECTION 7. (1) Except as otherwise provided in subsection (2) of this section, the assessments and levies of the following taxing units and special districts shall not be imposed while such lands remain qualified for special assessment for farm use under subsection (1) of ORS 308.370:

(a) Sanitary districts formed under ORS 450.005 to 450.245.

(b) Domestic water supply districts formed under ORS chapter 264.

(c) Water supply authorities and sanitary authorities formed under ORS 450.675 to 450.980.

(2) Subsection (1) of this section does not apply to:

(a) Benefit assessments or special ad valorem tax levies imposed prior to the effective date of this Act.

(b) Benefit assessments or special ad valorem tax levies imposed upon homesites situated within a parcel of farm use land. As used in this paragraph, "homesite" means not more than one acre of land upon which are constructed nonfarm dwellings and appurtenances.

(c) Benefit assessments or special ad valorem tax levies imposed subsequent to disqualification of lands for farm use assessment under subsection (1) of ORS 308.370.

SECTION 8. (1) No state agency, city, county or political subdivision of this state may exercise any of its powers to enact local laws or ordinances or impose restrictions or regulations affecting any farm use land situated within an exclusive farm use zone established under ORS 215.203 in a manner that would unreasonably restrict or regulate farm structures or that would unreasonably restrict or regulate accepted farming practices because of noise, dust, odor or other materials carried in the air or other conditions arising therefrom if such conditions do not extend beyond the boundaries of the exclusive farm use zone within which they are created in such manner as to interfere with the use of adjacent lands. "Accepted farming practice" as used in this subsection shall have the meaning set out in ORS 215.203.

(2) Nothing in this section is intended to limit or restrict the lawful exercise by any state agency, city, county or political subdivision of its power to protect the health, safety and welfare of the citizens of this state.

SECTION 9. (1) Any proposed division of land included within an exclusive farm use zone resulting in the creation of one or more parcels of land of 10 or more acres in size may be reviewed and approved or disapproved by the governing body of the county in which such land is situated. The governing body of a county by ordinance or regulation may re-

quire such prior review and approval for such divisions of land within exclusive farm use zones established within the county.

(2) Any proposed division of land included within an exclusive farm use zone resulting in the creation of one or more parcels of land of less than 10 acres in size shall be reviewed and approved or disapproved by the governing body of the county within which such land is situated.

(3) If the governing body of a county initiates a review as provided in subsection (1) or (2) of this section, it shall not approve any proposed division of land unless it finds that the proposed division of land is in conformity with the legislative intent set forth in section 1 of this Act.

(4) This section shall not apply to land divided by lien foreclosure or court ordered partitioning, including but not limited to partitioning by testate or intestate succession, or to the creation or sale of cemetery lots, if a cemetery is within the boundaries designated for a farm use zone at the time the zone is established.

Section 10. ORS 308.395, as amended by section 4, chapter —, Oregon Laws 1973 (Enrolled House Bill 2317), is amended to read:

308.395. (1) Except as provided in subsection (2) of this section, whenever land which has received special assessment as farm use land under subsection (2) of ORS 308.370 thereafter becomes disqualified for such assessment, the assessor shall notify the owner thereof and there shall be added to the tax extended against the land on the next general property tax roll, to be collected and distributed in the same manner as the remainder of the real property tax, an amount equal to the sum of the following:

(a) The total amount by which the taxes assessed against the land would have been increased if it had been valued without regard to subsection (2) of ORS 308.370 during the last [five] 10 or lesser number of years in which farm use assessment was in effect for the land.

(b) Interest upon the amounts of additional tax from each year included in paragraph (a) of subsection (1) of this section at the rate of six percent from the dates at which such additional taxes would have been payable if no special assessment had been in effect.

(2) Whenever land which has received special assessment as farm use land under subsection (2) of ORS 308.370 thereafter becomes disqualified for such assessment, and the notice required by subsection (3) of ORS 308.390 is not given, the assessor shall determine the date that the notice should have been given, shall notify the owner thereof and notwithstanding ORS 311.220, there shall be added to the tax extended against the land on the next general property tax roll, to be collected and distributed in the same manner as the remainder of the real property tax, an amount equal to the sum of the following:

(a) The total amount by which the taxes assessed against the land would have been increased if it had been valued without regard to subsection (2) of ORS 308.370 during the last [five] 10 or lesser number of years in which farm use assessment was in effect for the land prior to the time the notice should have been given, together with interest upon the amounts of additional tax from each year at the rate of six percent from the dates at which such additional taxes would have been payable if no special assessment had been in effect, and

(b) The total amount by which the taxes assessed against the land would have been increased if it had been valued without regard to subsection (2) of ORS 308.370 during the assessment year in which the notice should have been given and each assessment year thereafter, together with the interest which would have accrued had the amounts been placed on the tax roll in the applicable years, and

(c) A penalty equal to 20 percent of the amount specified in paragraph

(b) of this subsection; however, no penalty shall be imposed on any amount attributable to interest.

(3) In cases where the designation of specially assessed farm land is removed as a result of a sale or transfer described in paragraph (b) of subsection (1) of ORS 308.390, the lien for such increased taxes and interest shall attach as of the day preceding such sale or transfer.

(4) The amount determined to be due under subsection (1) of this section may be paid to the assessor prior to the completion of the next general property tax roll, pursuant to ORS 311.370.

(5) Whenever a farm use zone is established as described in subsection (1) of ORS 308.370, and land which is receiving special assessment as farm use land under subsection (2) of ORS 308.370 thereby is included in such zone, and such land is being used exclusively for farm use, the county assessor and tax collector shall cancel any potential additional taxes to be collected under this section. *[Additional taxes which may have become due or which have been paid prior to September 13, 1967, but which would have been canceled if the 1967 amendments to this section had been in effect, also shall be canceled or refunded (whichever applies) by the appropriate county officers.]*

SECTION 11. Notwithstanding the amendment to paragraph (a) of subsection (1) of ORS 308.395 by section 10 of this Act, for the purpose of computing any potential tax liability under ORS 308.395 on or after the effective date of this Act for any land that has received special assessment for farm use under subsection (2) of ORS 308.370 for more than five years prior to the effective date of this Act, such land shall be considered on the effective date of this Act to have received such special assessment for only the five years immediately prior to the effective date of this Act.

SECTION 12. Section 13 of this Act is added to and made a part of ORS 118.005 to 118.840.

SECTION 13. Interests in real property passing by reason of death that had received special assessment as farm use land under subsection (1) of ORS 308.370 for the tax year immediately preceding the date of death of the decedent shall be valued for the purposes of ORS 118.005 to 118.840 at its value for farm use determined by the assessor under subsection (1) of ORS 308.370 for the tax year immediately preceding the date of the death of the decedent.

SECTION 14. Section 15 of this Act is added to and made a part of ORS chapter 316.

SECTION 15. Notwithstanding any other provision of this chapter, when gain is included in federal taxable income:

(1) From property which is taxable under this chapter and which was valued for inheritance tax purposes under section 13 of this 1973 Act, or

(2) From property the basis of which is computed in whole or in part with respect to property that was valued for inheritance tax purposes under section 13 of this 1973 Act, there shall be added to federal taxable income the difference between the taxable gain that would otherwise be determined under this chapter and the gain that would be taxable had the basis for federal tax purposes been computed using the farm use value provided for under section 13 of this 1973 Act instead of the basis computed pursuant to section 1014 of the Internal Revenue Code.

SECTION 16. Nothing in this Act is intended to affect the authority of the Nuclear and Thermal Energy Council in determining suitable sites for the issuance of site certificates for thermal power plants, as authorized under ORS 453.305 to 453.575.

