

B-Engrossed
House Bill 4168

Ordered by the House March 3
Including House Amendments dated February 24 and March 3

Sponsored by COMMITTEE ON RULES (at the request of Governor Kate Brown)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires Governor to facilitate mediation sessions between representatives of forest industry and representatives of environmental interests. Identifies purposes and completion goal for and provides for confidentiality of mediation sessions. [*Appropriates moneys for mediation sessions.*] Requires joint legislative committee hearing during 2021 regular session to receive Governor's testimony regarding mediation process.

Allows person to register with State Forestry Department to receive notice of pesticide applications by helicopter to forestland near person's residence or water intake used by person.

Requires notice to department of proposed or imminent pesticide application by helicopter to forestland. Requires department to give notice of application to persons registered to receive notice.

Requires notice to department upon completion or partial completion of pesticide application. Provides escalating penalties for failures to report. Caps penalties at \$5,000 per day.

Requires Pesticide Analytical and Response Center to accept requests from certain entities for records and data concerning pesticide application by helicopter to forestland. Imposes fine of \$1,000 for failure of pesticide operator to timely supply records or data.

Prohibits impeding pesticide application by helicopter to forestland. Makes violation subject to fine of \$1,000 for first offense or \$5,000 for repeat offense within five years.

Prohibits pesticide application by helicopter to forestland in proximity to certain locations.

Requires State Board of Forestry to make certain rules applicable in Siskiyou Georegion.

Requires development and maintenance of comprehensive inventory of points of diversion for water on forestland.

Appropriates moneys to Office of Governor for biennium ending June 30, 2021, for purpose of paying expenses related to mediation sessions.

Appropriates moneys to State Forestry Department for biennium ending June 30, 2021, for carrying out department duties, functions and powers under Act with regard to private forests.

Limits expenditures for biennium ending June 30, 2021, by State Forestry Department from moneys including federal funds from United States Forest Service for fire protection and research projects, but excluding federal funds not previously authorized for expenditure and lottery funds, for carrying out department duties, functions and powers under Act with regard to private forests.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to forestry; and declaring an emergency.

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

4 **SECTION 1. (1) The Governor shall facilitate the organization and holding of one or more**
5 **mediation sessions between representatives of the forest industry and representatives of**
6 **environmental interests in accordance with the Memorandum of Understanding announced**
7 **by the Governor on February 10, 2020. The Governor shall limit participation in the mediation**
8 **sessions to not more than 10 representatives, but may not limit such third party assistance**
9 **as the representatives may require.**

10 **(2) The purpose of the mediation sessions shall be to develop an approach to evaluate and**
11 **jointly recommend substantive and procedural changes to Oregon Forest Practices Act laws**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 and regulations to advance the attainment of federal regulatory assurances for aquatic and
2 riparian-dependent species.

3 (3) The Governor shall organize the mediation sessions with the goal of fulfilling the
4 purpose described in subsection (2) of this section no later than 18 months after the effective
5 date of this 2020 Act.

6 (4) Except as provided in ORS 36.220 (1) to (4), mediation sessions described in this sec-
7 tion are not subject to ORS 36.220 to 36.238 or 192.610 to 192.690.

8 **SECTION 2.** Section 1 of this 2020 Act is repealed on January 2, 2023.

9 **NOTE:** Section 3 was deleted by amendment. Subsequent sections were not renumbered.

10 **SECTION 4.** The President of the Senate and the Speaker of the House of Representatives
11 shall arrange for legislative committees related to natural resources to hold a joint infor-
12 mational hearing during the 2021 regular session of the Eighty-first Legislative Assembly
13 regarding the mediation sessions described in section 1 of this 2020 Act. The committees
14 shall, at a minimum, invite the Governor to submit testimony or documents at the joint in-
15 formational hearing regarding the past and expected schedule and structure for the medi-
16 ation process and such other information concerning the mediation sessions as the Governor
17 deems reasonable and prudent to disclose.

18 **SECTION 5.** As used in sections 5 to 12 of this 2020 Act:

19 (1) "Beneficial use" means the use of water:

20 (a) For watering not more than one-half acre of lawn or noncommercial garden;

21 (b) By one or more dwelling units for domestic animal consumption ancillary to residen-
22 tial or related use of a property;

23 (c) By one or more dwelling units for household purposes or human consumption;

24 (d) For livestock watering; or

25 (e) Supplied for community purposes through a municipal water system, a system oper-
26 ated by a federally recognized Indian tribe or a system operated by a private corporation.
27 As used in this paragraph, "community purposes" includes, but is not limited to, uses de-
28 scribed in paragraphs (a) to (d) of this subsection, commercial or industrial use, fire pro-
29 tection, watering of public parks and street cleaning.

30 (2) "Department reporting system" means a forest activity electronic reporting and no-
31 tice system operated by the State Forestry Department.

32 (3) "Nearby recipient" means a person registered under section 6 of this 2020 Act:

33 (a) Whose parcel location information is reconciled under section 6 (2) of this 2020 Act
34 with a tax lot that is in whole or in part less than one mile from the edge of a proposed or
35 scheduled pesticide application by helicopter to forestland; or

36 (b) Whose water intake location noted under section 6 (4) of this 2020 Act is less than
37 one mile from the edge of a proposed or scheduled pesticide application by helicopter to
38 forestland.

39 (4) "Pesticide":

40 (a) Except as provided in this subsection, has the meaning given that term in ORS
41 634.006.

42 (b) Does not include fertilizer. As used in this paragraph, "fertilizer" means any sub-
43 stance, or any combination or mixture of substances, that is designed for use primarily as
44 a source of plant food, for inducing increased plant growth or for producing any physical,
45 microbial or chemical change in the soil.

1 **SECTION 6.** (1) A person may register with the State Forestry Department to receive
2 notices of proposed or scheduled pesticide applications by helicopter to forestland near the
3 residence of the person. To obtain registration, the person must provide the department
4 with:

- 5 (a) A description of the parcel where the person resides;
- 6 (b) Proof satisfactory to the department that the person resides at the parcel; and
- 7 (c) Contact information for the person that, at a minimum, includes:
 - 8 (A) A mailing address; and
 - 9 (B) An electronic mail address or telephone number.

10 (2) Upon the receipt of information under subsection (1) of this section, the department
11 shall reconcile the parcel location information with tax lot information and note the tax lot
12 in a geospatial layer maintained within a department reporting system.

13 (3) A person appropriating surface water for beneficial use may register with the de-
14 partment to receive notices of proposed or scheduled pesticide applications by helicopter to
15 forestland near the water intake used by the person. To obtain registration, the person must
16 provide the department with:

- 17 (a) The global positioning system coordinates for the water intake;
- 18 (b) If the beneficial use is subject to water right requirements, a permit, certificate,
19 registration, limited license or order of determination for the beneficial use;
- 20 (c) If the beneficial use is exempt from water right requirements, a description of the
21 spring box or other type of water intake and of the type of beneficial use;
- 22 (d) Unless established in documentation described in paragraph (b) of this subsection, an
23 attestation that the person believes the person has a lawful entitlement to make beneficial
24 use of the water;
- 25 (e) An attestation that the person controls the works at the point of diversion for the
26 beneficial use; and
- 27 (f) Contact information for the person that, at a minimum, includes:
 - 28 (A) A mailing address; and
 - 29 (B) An electronic mail address or telephone number.

30 (4) Upon the receipt of information under subsection (3) of this section, the department
31 shall note the location of the water intake in a geospatial layer maintained within a depart-
32 ment reporting system.

33 **SECTION 7.** (1) To the extent of any conflict between this section and ORS 527.610 to
34 527.770, the provisions of this section prevail.

35 (2) Notwithstanding ORS 527.670, an operator, timber owner or landowner proposing to
36 conduct a pesticide application by helicopter to forestland shall send the State Forestry De-
37 partment notice of the proposed pesticide application that includes the following:

- 38 (a) Identification of the pesticides likely to be used. The notice may not identify any
39 pesticides that are not likely to be used.
- 40 (b) Identification of the forestland units to receive pesticide application.
- 41 (c) Identification of a 90-day period within which the pesticide application is to occur.
- 42 (d) Contact information for the operator, timber owner or landowner providing the notice
43 that, at a minimum, includes a mail address, electronic mail address and telephone number.
- 44 (e) Any information required by State Board of Forestry rules.

45 (3) Except as provided in subsection (4) of this section, if the department reporting sys-

1 tem indicates that the location of the proposed pesticide application has one or more nearby
2 recipients, the beginning of the 90-day period identified in the notice under subsection (2)(c)
3 of this section must be 30 or more days after the date the notice is provided to the depart-
4 ment.

5 (4) If a pesticide application is not completed during the 90-day period identified in a no-
6 tice, the operator, timber owner or landowner must send a new notice before commencing
7 or completing the pesticide application. Notwithstanding ORS 527.670, if the new notice is
8 sent in the same calendar year as the original notice, the 90-day period identified in the new
9 notice must be seven or more days after the date the new notice is provided to the depart-
10 ment.

11 **SECTION 8.** (1) Upon receipt of a notice under section 7 (2) of this 2020 Act, a State
12 Forestry Department reporting system shall provide the operator, timber owner or land-
13 owner that provided the notice with a list of, and contact information for, any nearby re-
14 cipients for the proposed pesticide application.

15 (2) Two weeks after receiving a notice under section 7 (2) of this 2020 Act, and on the
16 date of receipt of any new notice under section 7 (4) of this 2020 Act, the department shall
17 send notice of the proposed pesticide application to the electronic mail address or telephone
18 number of each nearby recipient for the application. The notice sent by the department must
19 include, but need not be limited to, the location and nature of the proposed pesticide appli-
20 cation and the 90-day period within which the pesticide application may occur, and the
21 mailing address, electronic mail address and telephone number supplied as contact informa-
22 tion by the operator, timber owner or landowner that provided notice of the proposed pesti-
23 cide application under section 7 of this 2020 Act.

24 **SECTION 9.** (1) An operator, timber owner or landowner that sends notice under section
25 7 of this 2020 Act of a proposed pesticide application by helicopter to forestland shall notify
26 the State Forestry Department prior to the pesticide application by helicopter being made.
27 A notice under this section must:

- 28 (a) Be made by electronic communication to a department reporting system;
29 (b) Be sent to the department no later than 7 p.m. on the day preceding the pesticide
30 application;
31 (c) Specify the day following the notice as a day for pesticide application by helicopter;
32 (d) Identify the forestland units to receive pesticide application on the specified day; and
33 (e) Contain any additional information required by State Board of Forestry rules.

34 (2) The sending of a notice under subsection (1) of this section does not limit the number
35 of days on which a pesticide application by helicopter may be made. However, a separate
36 notice is required for each day that a pesticide application by helicopter is to be made. The
37 sending of a notice under subsection (1) of this section does not require that a pesticide ap-
38 plication identified in the notice be conducted.

39 (3) Upon receipt of a notice under this section, the department shall send the schedule
40 information for the pesticide application and forestland unit identification to the electronic
41 mail address or telephone number of each nearby recipient to which the department sent
42 notice of the proposed pesticide application under section 8 of this 2020 Act.

43 **SECTION 10.** (1) If a forestland unit identified in a notice sent under section 9 of this 2020
44 Act receives an incomplete pesticide application on the date specified in the notice, the op-
45 erator, timber owner or landowner shall send a notice of incompleteness to a State Forestry

1 Department reporting system no later than 24 hours after the end of the date specified for
2 the application in the notice. The notice of incompleteness shall consist of designating the
3 forestland units to which an incomplete pesticide application by helicopter was made. Entry
4 of a notice of incompleteness does not affect the requirement to send notice under section 9
5 of this 2020 Act before completing the pesticide application.

6 (2) An operator, timber owner or landowner that sends a notice under section 9 of this
7 2020 Act shall send a completion verification to a department reporting system no later than
8 24 hours after the completion of the pesticide application. The completion verification shall
9 consist of designating the forestland units to which the pesticide application by helicopter
10 was made.

11 (3) The department shall make an electronic listing of the forestland units that were
12 identified in the notice under section 9 of this 2020 Act available to the operator, timber
13 owner or landowner in a format that allows the operator, timber owner or landowner to
14 electronically designate:

15 (a) Forestland units from the list that have received an incomplete pesticide application,
16 when sending a notice of incompleteness; and

17 (b) Forestland units from the list on which pesticide application is complete, when send-
18 ing a completion verification.

19 **SECTION 11.** (1) As used in this section, "spray season" means a period that:

20 (a) Begins on January 1 and ends on June 30 in the same calendar year; or

21 (b) Begins on July 1 and ends on December 31 in the same calendar year.

22 (2) If an operator, timber owner or landowner fails to timely send a notice under section
23 9 of this 2020 Act or timely send a notice of incompleteness or completion verification under
24 section 10 of this 2020 Act for one or more forestland units, or any combination of such
25 failures on the same day:

26 (a) For the first day during a spray season on which one or more failures occur, the State
27 Forestry Department shall issue the landowner a warning.

28 (b) For the second day during a single spray season on which one or more failures occur,
29 the department shall assess the landowner a civil penalty of \$1,000.

30 (c) For a third day or any subsequent day during a single spray season on which one or
31 more failures occur, the department shall assess the landowner a civil penalty of \$5,000 per
32 day.

33 **SECTION 12.** (1) If the State Forestry Department receives a notice under section 7 of
34 this 2020 Act, at the beginning of the 90-day period identified in the notice, the department
35 shall designate the forestland units identified in the notice as being in available status. Ex-
36 cept as provided in subsection (2) of this section, the department shall terminate the avail-
37 able status of a forestland unit after 90 days.

38 (2) Upon receiving a notice under section 9 of this 2020 Act specifying a date on which a
39 pesticide application by helicopter is to be made, the department shall change the designation
40 of any forestland unit identified in the notice to pending status.

41 (3) Upon receiving a notice of incompleteness under section 10 of this 2020 Act, the de-
42 partment shall change the designation of any forestland unit identified in the notice to in-
43 complete status.

44 (4) Upon receiving a completion verification under section 10 of this 2020 Act, the de-
45 partment shall change the designation of any forestland unit identified in the completion

1 verification to completed status.

2 (5) The department shall change the designation of a forestland unit from pending status
3 if, at 11:59 p.m. on the day following the pesticide application date specified for the forestland
4 unit in a notice under section 9 of this 2020 Act, the department has not received a notice
5 of incompleteness or completion verification for the forestland unit. Subject to subsection (1)
6 of this section, the department shall return a forestland unit described in this subsection
7 from pending status to available status.

8 **SECTION 13.** (1) As used in this section, “department reporting system” has the meaning
9 given that term in section 5 of this 2020 Act.

10 (2) Sections 5 to 12 of this 2020 Act apply to pesticide applications occurring on or after:

11 (a) July 1, 2021; or

12 (b) If the State Chief Information Officer gives public notice prior to July 1, 2021, that
13 the State Forestry Department reporting system lacks the required capacity for the carrying
14 out of sections 5 to 12 of this 2020 Act, the earlier of:

15 (A) July 1, 2022; or

16 (B) The date on which the State Chief Information Officer gives public notice that the
17 department reporting system has the required capacity.

18 **SECTION 14.** (1) As used in this section, “department reporting system” has the meaning
19 given that term in section 5 of this 2020 Act.

20 (2) The State Forestry Department shall develop a system to allow nondepartment mes-
21 sages to nearby recipients described in section 8 (1) of this 2020 Act, notices under section
22 9 of this 2020 Act and notices of incompleteness or completion verifications under section 10
23 of this 2020 Act to be sent electronically using mobile telephone equipment to access a de-
24 partment reporting system. The department shall make the access system compatible with,
25 at a minimum, the two most commonly used types of mobile telephone operating systems.

26 **SECTION 15.** (1) As used in this section:

27 (a) “Daily spray records” means records required of a pesticide operator under ORS
28 634.146.

29 (b) “Geographic information system data” means the electronic location data recorded
30 during a pesticide application by helicopter.

31 (c) “Health provider” means a person holding a license, certificate or permit issued under
32 Oregon law to provide the diagnosis, treatment or care of disease or injury in the ordinary
33 course of business or practice of a profession, when seeking to provide diagnosis, treatment
34 or care of a patient in response to a suspected exposure of the patient to pesticide.

35 (d) “Pesticide operator” has the meaning given that term in ORS 634.006.

36 (2) The Pesticide Analytical and Response Center shall accept requests for a pesticide
37 operator’s daily spray records and geographic information system data concerning a pesticide
38 application by helicopter to forestland from:

39 (a) A unit of state government, as defined in ORS 174.111;

40 (b) A law enforcement agency, as defined in ORS 181A.010; or

41 (c) A health provider.

42 (3)(a) The center shall forward a request received under subsection (2) of this section to
43 the pesticide operator that is the subject of the request. A pesticide operator that receives
44 a request from the center shall send the center the daily spray records and geographic in-
45 formation system data possessed or accessible to the pesticide operator concerning pesticide

1 applications by helicopter to forestland identified in the request.

2 (b) The pesticide operator shall send the requested daily spray record information to the
3 center no later than 24 hours after receiving the request. The pesticide operator shall send
4 the requested geographic information system data to the center no later than five business
5 days after receiving the request.

6 (c) Upon receiving requested information from a pesticide operator, the center shall for-
7 ward the information received to the requesting unit of state government, law enforcement
8 agency or health provider.

9 (4) Failure of a pesticide operator to timely send records or data as required under sub-
10 section (3) of this section is a violation subject to a fine of \$1,000 per request.

11 (5) Records and data sent or received under this section are not public records for pur-
12 poses of ORS 192.311 to 192.478.

13 **SECTION 16.** (1) As used in this section:

14 (a) "Interfere":

15 (A) Means to use force, violence or action that impedes a pesticide application by heli-
16 copter to forestland.

17 (B) Does not mean:

18 (i) The memorializing of pesticide application activities through photography, videotaping,
19 audiotaping or other creation of an electronic record by a person on public property or on
20 private property where the person has a lawful right to be present; or

21 (ii) Other activities to the extent that the activities are protected under the First
22 Amendment to the United States Constitution or Article I, section 8, of the Oregon Consti-
23 tution.

24 (b) "Nearby recipient" has the meaning given that term in section 5 of this 2020 Act.

25 (2) A person that intentionally interferes with a pesticide application by helicopter to
26 forestland commits an unclassified violation punishable by a fine of:

27 (a) \$1,000, if the person has not previously been found to have committed a violation
28 under this section; or

29 (b) \$5,000, if not more than five years before the date of the interference the person was
30 found to have committed a violation under this section.

31 (3) For purposes of this section, there is a conclusive presumption that interference is
32 intentional if performed by a nearby recipient who was sent information under section 9 (3)
33 of this 2020 Act concerning the pesticide application.

34 **SECTION 17.** (1) As used in this section:

35 (a) "Beneficial use," "department reporting system" and "pesticide" have the meanings
36 given those terms in section 5 of this 2020 Act.

37 (b) "Flowing water" means surface water is present at the time of a pesticide application.

38 (c) "Inhabited dwelling" means a structure or part of a structure used as a home, resi-
39 dence or sleeping place by a person maintaining a household or by two or more persons
40 maintaining a common household, but does not include outbuildings, yard areas or other land
41 associated with the structure.

42 (d) "School" means the campus of:

43 (A) A Head Start program;

44 (B) A public or private institution offering instruction for all or part of prekindergarten
45 through grade 12;

1 (C) The Oregon School for the Deaf;

2 (D) A regional residential academy operated by the Oregon Youth Authority;

3 (E) An education service district or community college; or

4 (F) A public or private college or university.

5 (e) "Sixth-level hydrologic unit" means the cataloging unit level of the 12-digit hydrologic
6 unit mapping system developed by the Federal Geographic Data Committee.

7 (f) "Type D stream" means a stream that has domestic use, but does not have fish use.

8 (g) "Type F stream" means a stream that has fish use or has both domestic use and fish
9 use.

10 (h) "Type N stream" means a stream that does not have domestic use or fish use.

11 (2) Notwithstanding ORS 527.672, a person may not directly apply pesticide by helicopter
12 to forestland:

13 (a) Less than 300 feet from an inhabited dwelling, unless the landowner is the requester
14 of the application;

15 (b) Less than 300 feet from a school, unless the school board or other governing body for
16 the school is the requester of the application; or

17 (c) Subject to subsection (4) of this section, less than 300 feet from a water intake for a
18 beneficial use of water:

19 (A) Within the same sixth-level hydrologic unit as a water source for beneficial use that
20 is registered under section 6 of this 2020 Act; or

21 (B) Within the same sixth-level hydrologic unit as a water source for beneficial use that
22 is identified by the State Forestry Department and for which the location has been recorded
23 in the department reporting system.

24 (3) On forestland that is subject to ORS 527.610 to 527.770, a person may not directly ap-
25 ply pesticide by helicopter near a stream:

26 (a) That is identified by the department as a Type D stream or Type F stream, within the
27 greatest of:

28 (A) 75 feet;

29 (B) The required vegetated buffer; or

30 (C) A riparian management area existing in State Board of Forestry rules on the effec-
31 tive date of this 2020 Act within which vegetation retention and special management prac-
32 tices are required; or

33 (b) That is identified by the department as a Type N stream and has flowing water, within
34 50 feet.

35 (4) The restrictions in subsection (2)(c) of this section are contingent upon the water
36 intake location being recorded in the department reporting system.

37 **SECTION 18.** Section 17 of this 2020 Act applies to pesticide applications made on or after
38 January 1, 2021.

39 **SECTION 19.** The State Board of Forestry shall adopt rules to make 2017 board rules
40 regarding salmon, steelhead and bull trout applicable for the Siskiyou Georegion.

41 **SECTION 20.** The State Board of Forestry shall make the rules adopted by the board
42 under section 19 of this 2020 Act effective on January 1, 2021.

43 **SECTION 21.** (1) As used in this section, "beneficial use" and "department reporting
44 system" have the meanings given those terms in section 5 of this 2020 Act.

45 (2) The State Forestry Department, in collaboration with the Water Resources Depart-

1 ment, shall develop and maintain a comprehensive inventory in the department reporting
2 system of beneficial use points of diversion that are located on forestland.

3 **SECTION 22.** Section 21 of this 2020 Act becomes operative on the date sections 5 to 12
4 of this 2020 Act become applicable to pesticide applications as determined under section 13
5 of this 2020 Act.

6 **SECTION 23.** In addition to and not in lieu of any other appropriation, there is appro-
7 priated to the Office of the Governor, for the biennium ending June 30, 2021, out of the
8 General Fund, the amount of \$175,000, which may be expended for expenses related to medi-
9 ation sessions described in section 1 of this 2020 Act.

10 **SECTION 24.** In addition to and not in lieu of any other appropriation, there is appro-
11 priated to the State Forestry Department, for the biennium ending June 30, 2021, out of the
12 General Fund, the amount of \$894,317, which may be expended for carrying out department
13 duties, functions and powers under sections 6 to 14 and 16 to 21 of this 2020 Act with regard
14 to private forests.

15 **SECTION 25.** Notwithstanding any other law limiting expenditures, the limitation on
16 expenditures established by section 2 (4), chapter 664, Oregon Laws 2019, for the biennium
17 ending June 30, 2021, as the maximum limit for payment of expenses from fees, moneys or
18 other revenues, including Miscellaneous Receipts and including federal funds from the United
19 States Forest Service for fire protection and for research projects, but excluding lottery
20 funds and federal funds not described in section 2, chapter 664, Oregon Laws 2019, collected
21 or received by the State Forestry Department, is increased by \$103,545 for the purpose of
22 carrying out department duties, functions and powers under sections 6 to 14 and 16 to 21 of
23 this 2020 Act with regard to private forests.

24 **SECTION 26.** This 2020 Act being necessary for the immediate preservation of the public
25 peace, health and safety, an emergency is declared to exist, and this 2020 Act takes effect
26 on its passage.

27 _____