

Testimony in opposition to HB 2659  
House Natural Resources Committee  
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To Chair Witt, Vice Chairs Gorsek and Sprenger and members of the committee:

My name is Clint Bentz and I am here to testify in opposition to HB 2659. It overturns nearly 60 years of efforts to promote sound forest management practices which are codified in the Forest Practices Act.

I am a Certified Public Accountant who teaches timber taxation, succession and estate planning, and trust tax law to other tax professionals nationally. I was part of the Oregon Law Commission working group which revised Oregon's Estate Tax statutes for passage in the 2011 session. I am the former chairman of the American Tree Farm System and the American Forest Foundation and was the first family forest landowner to hold either of those positions. I am also a volunteer OSU Extension Master Woodland Manager and a board member of OSU's Austin Family Business Program. My parents and I were honored by the American Forest Foundation as the 2002 National Outstanding Tree Farmers of the Year for our sustainable forestry work on our 700-acre family forest 30 miles east of here. We were also honored by Gov. Ted Kulongoski for our work on the Oregon Salmon Plan. I am also the chair of the South Santiam Local Advisory Committee which monitors and regulates agricultural impact on the stream health of the South Santiam. Clean water and sustainable forestry management are very important to me personally and professionally.

Oregon has levied property taxes in one form or another since statehood in 1859. For the first 100 years, both the timber and the land were taxed together. This tax burden was one of the factors that led to logging much of the old growth timber that existed on private land leaving the land to erode or convert to farm or urban use. In 1929, to encourage replanting after harvest, the legislature passed a Forest Fee and Yield tax which gave owners the option to pay most of their timber taxes on their reforested lands when they cut their trees instead of each year as the trees grew. All forestland in Oregon was regularly cruised and appraised for property tax purposes by foresters working for the county assessors.

Recognizing that Eastside forests grew much slower than Westside forests and the resulting long-term tax burden of including timber on the tax rolls, in 1961 the legislature exempted all standing timber on the Eastside from property taxes, leaving only the land on the tax rolls. To replace lost property taxes, the Eastern Oregon Severance Tax was imposed. On the Westside, two new tax systems were put in place, a partial tax exemption for all timber under 12" in diameter, with larger trees put on the tax rolls at 30% of their immediate harvest value with an additional severance tax paid at harvest. This system also allowed landowners to ask that their land become "designated forest land" which was valued based on its ability to grow timber instead of its highest and best use value. In addition, the Small Tract Option was created that allowed small landowners (under 1,000 acres) to pay property taxes based on the productivity value of their land instead of using the new the partial tax exemption program. Values were established in statute using five Site Classes.

In 1977 the major forest product companies instituted a class action suit against the Tax Commission regarding the land and timber valuations that were being set by the Tax Commission. They won their case in the Oregon Supreme Court. As the case progressed, over 60% of the remaining old growth timber held on private lands was rapidly liquidated. As a result of the state's loss of this court case, and the fact that appraising timber for property tax purposes was an expensive and contentious issue, the 1977 legislature exempted timber from the

property tax rolls and instead instituted a 6.5% Severance Tax on private timber at the time of harvest. They also repealed the Forest Fee and Yield Tax but left the Small Tract Option intact.

Ballot Measure 5 in 1990 limited property tax rates to 1.5%. The legislature concluded that the Severance tax was a property tax so they eliminated it in lieu of two new taxes for the privilege of harvesting timber: The Forest Products Harvest Tax and the Eastern and Western Oregon Severance Taxes. Based on the report of the Timber Taxation Subcommittee, the 1993 legislature placed in statute specially assessed forestland values for both Eastside and Westside based on eight site classes and created an index to adjust the values based on a log purchase value index. These proposals were based on the theory that standing timber should be treated like an agricultural crop and exempt from property tax. This theory was adopted by the 1993 Legislature in a series of legislative findings and policy statements. HB 2438 provided that the productivity value of the land should be taxed at the 1.5% Measure 5 rate. Under this regime, 20% of the assessed forestland value was collected annually with the remaining 80% collected through the Eastern and Western Oregon Severance Tax at harvest.

Ballot Measure 47 was passed in 1996 which set a maximum assessed value equal to 90% of the 1995-96 assessed value and further established that this maximum value could only increase by 3% per year after 1997-98. The maximum specially assessed values for forestland were locked in at the 20% value created by the 1993 legislature. Concern continued about whether the Eastern and Western Oregon Severance Tax would be construed as a property tax subject to Measures 5 and 47.

The 1999 legislature passed HB 3575 which imposed a new system for taxing forestland which phased in through 2003. Forestland value and maximum assessed value under Measure 50 were determined as if the land had been assessed at 100% of the statutory value in 1995 and the Western and Eastern Oregon Severance Taxes were eliminated since 100% of the property tax was now collected annually. A working group was appointed to report to the 2001 legislature regarding replacing the Small Tract Option program which was becoming too expensive to administer.

The 2001 legislature passed HB 2197 which instituted the new Small Tract Forestland (STF) program for small woodland owners (under 5,000 acres). I participated in the working group which created that program and helped get it passed and adopted by the small woodland owner community. It created a system by which the property was taxed annually at 20% of the designated forestland statutory value. A new severance tax was created to capture the remaining 80% at harvest. To make the program work administratively, the severance tax rate was created by mimicking the Measure 5 and 47 limitations using a mathematical model that returned the same amount of tax revenue over a complete rotation of timber that all the landowners in the system would have paid if they were in the regular designated forestland program.

Currently there are three systems of property taxation for forestland. There are highest and best use (HBU) forestlands which are valued based on commercial timberland transactions segregated by the eight site classes. There is landowner designated forestland which is valued the same as the HBU forestland based on its site class. Then there is the Small Tract Forestland (STF) program where the designated forestland is taxed at 20% of the designated forestland value with the landowner subject to a Severance Tax at harvest designed to capture the remaining 80% on all the lands in the STF program. These bare forestland values are updated and certified annually by the Oregon Department of Revenue based on procedures set out by ORS 321.207 to 321.213 and OAR 150-321-0200. Arms-length market sale evidence of commercial blocks of forestland is the primary appraisal method to be used under these procedures.

Oregon is the Persian Gulf of Timber. Nowhere else on the planet does high quality softwood timber grow bigger, better or faster. Nearly half of Oregon is forestland with 80% of that growing commercial grade timber. This 80% does not include timberland set aside in wilderness areas and national parks. The Federal Government owns 60% of this land, large private landowners own 22%, over 100,000 small private landowners

own 12%, the State and counties own 4% and the tribes own the remaining 2%. We are the number one softwood lumber producer in the nation. We produce 40% more than our nearest competitor, Washington. We are the number one plywood producer, twice as big as our nearest competitor, Louisiana. We are a leader in engineered wood products with one quarter of the nation's engineered wood manufacturing plants located here in Oregon. We have a strong, robust and science-based Forest Practices Act. 61,000 people work in the forest sector with an average wage of \$54,200, 6% higher than the average wage for all Oregon employment. In rural areas, forest sector jobs pay as much as 92% more than the county average wage.

With our progressive property tax and forest practices laws, Oregon's forests are growing. According to research by the US Forest Service, for the 10-year period 2006-2015, on Oregon's private forestland the amount of timber harvested each year is about 77% of the annual growth. Roughly 11% of the annual growth is lost to damage by fire, insects, and disease leaving a net increase of roughly 12% each year. The state and county forestlands harvested 56% of their annual growth over the same period, with 18% lost to fire, insects and disease leaving 26% of the annual growth each year. The federal forests only harvested 8% of their annual growth over that period, with 36% lost to fire, insects and disease leaving 56% of the annual growth intact. Overall, each year Oregon is harvesting 39% of its annual growth, losing 25% of its growth to fire, insects and disease, leaving 36% of its growth in the forest.

With respect, I believe that HB 2659 is bad public policy poorly executed. It introduces new terms like "natural forest", "semi-natural forest" and "timber plantation" that are ill-defined and will be the subject of intense litigation at the county level since the county assessors are responsible for making these determinations. For example, what does "intensively logged" mean? How large does a logged and replanted area need to be before it becomes a "timber plantation"? 1 tree, 1 acre, 40 acres, 120 acres? Under the Oregon Forest Practices Act, clear-cuts are limited to 120 acres with leave tree and downed woody debris requirements that mimic a natural fire event. A "timber plantation" does not come into being until the trees are 5 meters in height with a 40% closure. It can take anywhere from 5 to 15 years to achieve this condition depending on the site and the intensity of the forest management regime. Until the trees reach this condition, the land would be considered "non-forested land" and be taxed at its highest and best use value. The idea of a "natural forest" is somewhat amusing since all forestland in Oregon has been impacted by human activity over the last 10,000 years.

The State Forester is directed to collaborate with the county assessors to develop a system for forestland owners to estimate the area of land they own in each category based on satellite and ground-based measurements. This data does not currently exist in a usable form and will require extensive and ongoing on-the-ground verification. Who will pay for this work? Who will make the final call as to what is considered as "natural", "semi-natural", and "timber plantation" forest for a particular landowner? Most timber tracts are made up of multiple stands of timber of different ages and types. At what scale will these classification decisions be made? On a landscape basis? Landowner basis? By tax lot? By depletion pool? By timber tract? By timber stand or type within the tract? Can nearby timber stands held by the same or different owners be aggregated together on a landscape basis so that the forestland is counted as "supporting a diversity of tree and understory species, tree sizes and tree ages consistent with natural forest conditions"? Historical and current natural forest conditions include million acre plus wildfires that left behind largely monocultural and homogenous forest ages and types. Mother nature allows for much more forest disturbance than our Forest Practices Act. The scale for determination is not addressed anywhere in the statute.

Maintaining a diversity of tree and understory species, tree sizes and tree ages on all 30 million acres of Oregon's forests is not a reasonable or desirable future condition if we want to produce Douglas Fir or any other type of timber on a commercial basis. Roughly 2/3 of our forestland in Oregon is currently under a largely no-touch management regime and only 13% of our annual timber harvest is coming from these lands.

Our premier softwood, Douglas Fir, is genetically adapted as a first stage succession forest that comes in after the large forest fires that dominated the Western Oregon landscape prior to the 1940's when substantial efforts at fire suppression first started. The species cannot tolerate more than 30% shade cover. It will not regenerate in a so-called natural or semi-natural forest without a large-scale disturbance like a fire which generates a large, multi-acre opening the forest canopy. Other more shade-tolerant fir species also grow better in full sunlight. Our current clear-cut regulations are designed to promote the growth of Douglas Fir as well as the other fir species that grow in Western Oregon while maintaining age and class diversity in our forest landscapes.

Eastern Oregon is a fire-adapted climate. Pine does regenerate well in the understory, and it does not do as well in full sunlight. Therefore, while these sites normally are "intensively logged", Eastside pine silviculture does not normally include clear-cuts.

Under HB 2659 any forestland that is not "natural" or "semi-natural" forest is excluded from special use valuation as forestland. The special use valuation is based on the value that large timber companies and timber investors sell industrial blocks of timberland to each other. They will not be impacted by this part of the law as their land values will not change. The entire impact of the change in land values will fall on small family forest landowners whose forestland does have higher and better uses than as commercial forestland. On my own 25-acre property, my HBU value per my property tax statement is over \$11,000 per acre as rural residential land rather than the \$466 per acre assessed value it has as Class FC commercial forestland. Over 100,000 Oregonians just like me own over 3.6 million acres (12%) of the forestland in Oregon and we currently contribute 12% of the annual timber harvest.

Since the definition of forestland in the Small Tract Forestland program is linked to the definitions in this bill, the STF lands will also be impacted by the new definitions and any forestland that is deemed as not "natural" or "semi-natural" forests will also taxed at highest and best use plus the value of the timber on the land.

Changes to ORS 308.236 will remove the exemption for forest management roads from assessment. These roads are necessary for fire suppression and other management activities and are subject to numerous regulations under the Forest Practices Act. ORS 307.827 which exempts environmentally sensitive logging equipment for property taxation is repealed. This was put in place to encourage logging companies to purchase new equipment that had less environmental impact. ORS 307.831 which exempts skyline and swing yarders which also have a very small environmental footprint compared to ground logging systems is also repealed. All these provisions were put into place to encourage and reward these substantial investments in environmentally friendly forest practices.

The biggest change under this statute is the addition of standing timber back to the tax rolls on all lands that are not "natural" or "semi-natural" forests. This effectively repeals the legislative findings and policy statements of the 1993 legislature that modern forestry on private reforested land should be treated as a crop and exempted from taxation as are all other crops in the field including orchards and takes us back to pre-1977 law where the value of standing timber was taxed annually instead of at the time of harvest. As the effective date of this dramatic tax increase is only 90 days from sine die, long before any challenges can be mounted, if this bill is passed I expect to see again what was happening prior to the 1977 law changes which led to removing timber from the tax rolls – namely the wholesale liquidation of mature timber inventories on both large and small private land ownerships, large changes in land use from forestry to higher value uses, land going back to the counties for non-payment of taxes, continued shortening of timber rotation ages to control and limit the value of the standing timber for tax purposes, and fragmentation of land ownership as the land is parcelized for sale. I would also expect legal action by the forest landowner community for unequal treatment under the law for our crop compared to the tax treatment of agriculture in Oregon, as well as challenges under Measures 5 and 47.

Finally, counties are directed to allocate no less than 30% of the additional revenues received under this bill to so-called “climate adaptation” and “climate smart” forest practices. While some practices are listed as examples, these terms are not defined in statute or common practice. Since the counties do not own much forest land themselves, how will these funds be spent and who will receive them? Will they need to set up and run new cost-sharing and grant programs? Will these programs be limited to benefitting the private lands which are paying the new taxes? None of this is addressed in the statute.

How will the counties pay the costs of reassessing the millions of acres of disqualified designated forestland and STF lands and defending those determinations and reassessments in tax court? Current land values are set in statute and little work is required by the county assessors to maintain and update these values. In addition, the number of new foresters required to be trained and hired by the counties to regularly cruise and value over 10 million acres of private timber, in addition to the administrative and legal defense costs of making the determinations and re-determinations of what is natural, semi-natural, non-forestland and timber plantation land will be staggering. The cost of these new unfunded mandates to the counties is not addressed at all in this legislation.

On a personal note, our award-winning 700-acre family forestland, the Blue Den Ranch, LLC currently pays around \$10,000 per year in property taxes. We have been diligently pushing brush and planting trees for the last 35 years turning a cut-over stump ranch back into a productive, sustainable multi-use forest. Based on our current property tax statements and timber values, with no adjustments for highest and best use land values, our annual property tax bill under this proposed bill would increase 5 times to nearly \$50,000 per year. As our timber matures and the land is adjusted to highest and best use values, I could easily see our property taxes increase to \$100,000 per year or more. There is no way we or anyone else could continue to maintain our property as forestland – or any use other than commercial development – with this type of annual tax burden.

Under our tax current system, Oregon’s forests are large and growing on a sustainable basis providing clean air, clean water, wildlife habitat and recreation for all Oregonians. They currently sequester over half the carbon produced in Oregon. The forest products sector is the backbone of the rural economies of much of Oregon. This legislation would do enormous harm to this sector and to Oregon’s vibrant private forests. I urge you to vote no on this bill.