

HB 4168 A STAFF MEASURE SUMMARY**House Committee On Rules****Action Date:** 02/21/20**Action:** Do pass with amendments and be referred to Ways and Means by prior reference.
(Printed A-Eng.)**Vote:** 6-1-0-0**Yeas:** 6 - Drazan, Fahey, Holvey, Nosse, Smith Warner, Zika**Nays:** 1 - Sprenger**Fiscal:** Fiscal impact issued**Revenue:** No revenue impact**Prepared By:** Melissa Leoni, LPRO Analyst**Meeting Dates:** 2/20, 2/21**WHAT THE MEASURE DOES:**

Directs the Governor to facilitate mediation sessions between no more than ten representatives of the forest industry and environmental interests in accordance with the February 10, 2020 Memorandum of Understanding. Establishes the goal of developing joint recommendations for changes to the Oregon Forest Practices Act within 18 months, appropriates funding, and sunsets mediation provisions on January 2, 2023. Requires a joint legislative informational hearing be held during the 2021 legislative session regarding the structure and status of the mediation sessions. Requires a person who wants to receive notices of forestland pesticide applications by helicopter near their residence or water intake, to register with the Oregon Department of Forestry (ODF) and provide specified information. Requires an operator, timber owner, or landowner proposing or executing a pesticide application by helicopter to notify ODF via the department reporting system when: (1) the pesticide application is being proposed, including identification of the pesticides likely to be used, the 90-day application period window, and forestland units to receive the application; (2) the pesticide application is scheduled, which must be communicated to ODF no later than 7 p.m. the day preceding the application and must include the forestland units to receive the application on the following specified day; specifies that a separate notice is required for each day a pesticide application by helicopter is to be made; (3) the scheduled pesticide application is incomplete, which must be communicated to ODF within 24 hours after the end of the specified application date; and (4) the scheduled pesticide application is complete, which also must be communicated to ODF within 24 hours after the end of the specified application date. Requires ODF to develop and maintain a department reporting system to allow notices from an operator, timber owner, or landowner to be sent electronically via mobile telephone to ODF, and to provide notice of proposed or scheduled pesticide application to each registered person whose tax lot or water intake location is less than one mile from the edge of the pesticide application. Specifies timeline requirements for notices. Requires ODF, upon receipt of each notice type, to designate the forestland units as being in available, pending, incomplete, or complete status. Requires ODF to provide the operator, timber owner, or landowner a list of, and contact information for, any nearby registered persons. Requires ODF incorporate submitted tax lot or water intake locations in a geospatial layer of the department reporting system. Requires ODF, in collaboration with the Water Resources Department, to develop and maintain a comprehensive inventory in the department reporting system of beneficial use points of diversion located on forestland. Applies penalties for failure of an operator, timber owner, or landowner to send timely notice of scheduled applications, or incomplete or complete applications, including a warning for the first day, a \$1,000 civil penalty for the second day, and a \$5,000 civil penalty for the third day or any subsequent day during a spray season. Pesticide application notice provisions become operative on July 1, 2021 or the date on which the State Chief Information Officer gives public notice that the department reporting system has the required capacity, which must occur by July 1, 2022. Requires the Pesticide Analytical and Response Center (PARC) to facilitate

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requests for a pesticide operator's daily spray records and geographic information system data related to a forestland pesticide application by helicopter from a unit of state government, a law enforcement agency, or a health provider. Requires the pesticide operator to send PARC the daily spray records within 24 hours, and the geographic information system data within five business days of receiving the request. Punishes a pesticide operator \$1,000 per request for failure to send timely required records or data. States that records and data sent or received are not public records. Punishes a person who intentionally interferes with a forestland pesticide application by helicopter with an unclassified violation and fine of \$1,000 if the person has not committed a violation within five years, and \$5,000 otherwise. Prohibits forestland pesticide application by helicopter less than 300 feet from an inhabited dwelling, school, or water intake, provided that the owner is not the requester of the application, beginning January 1, 2021. Prohibits, provided that the water intake location is recorded in the department reporting system, pesticide application by helicopter on forestland subject to the Oregon Forest Practices Act near a stream that has domestic use, fish use, or both, within the greatest of 75 feet, the required vegetated buffer, or a riparian management area within which certain practices are required, and within 50 feet of a stream that has neither domestic or fish use, effective January 1, 2021. Requires ODF to adopt rules to make 2017 board rules regarding salmon, steelhead, and bull trout applicable for the Siskiyou Georegion, effective January 1, 2021. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Timeframe in Memorandum of Understanding
- Involvement of both parties in the past and in going forward
- Real-time notification to be the first system in the nation
- Ground rules for future mediation sessions

EFFECT OF AMENDMENT:

Replaces measure.

BACKGROUND:

On February 10, 2020, Governor Kate Brown announced that representatives from Oregon's forest industry and environmental interests had signed a Memorandum of Understanding (MOU) to achieve greater business certainty for forest landowners and industries, greater environmental certainty for the survival and recovery of threatened and endangered species and to ensure that drinking water and aquatic resources are protected, and a durable framework and process to resolve future issues.

The MOU signatories agreed to: (1) a mediated science-based policy development process to recommend changes to Oregon forest practice laws and regulations that would enable an application to the federal wildlife agencies for an approvable statewide Habitat Conservation Plan, or other mechanism for federal regulatory assurances covering listed salmonids and other aquatic and riparian-dependent species; (2) publicly support legislation in the 2020 legislative session that would enable the mediation process with public funding for staffing and technical resources, make changes to aerial pesticide spraying notice and buffer requirements, and direct the Board of Forestry to extend the 2017 salmon, steelhead, and bull trout stream rules to the Siskiyou Georegion; and (3) withdraw or terminate all forestry-related initiative petitions and related litigation following the passage of the 2020 legislation. House Bill 4168-A is the referenced 2020 legislation that contains the agreed-upon provisions.

House Bill 4168-A would direct the Governor to facilitate mediation sessions between forest industry and environmental interests on changes to the Oregon Forest Practices Act; establish a notice-based system for aerial pesticide spray, provide for access to spray records, and establish penalties for failure to provide timely notice or information; prohibit aerial pesticide spray within 300 feet of an inhabited dwelling, school, or water intake; establish new buffer requirements for streams with domestic use, fish use, or both uses; and require ODF to make 2017 board rules regarding salmon, steelhead, and bull trout applicable for the Siskiyou Georegion.