

**Enrolled**  
**Senate Bill 1602**

Sponsored by Senator COURTNEY; Senator WAGNER, Representatives GORSEK, HAYDEN, HELT, HOLVEY, KENY-GUYER, LEIF, MARSH, MCKEOWN, MCLAIN, MITCHELL, NERON, NOSSE, REARDON, SMITH DB, SMITH WARNER, WILDE, WITT, ZIKA (at the request of Joint Committee on the First Special Session of 2020)

CHAPTER .....

AN ACT

Relating to forests; and declaring an emergency.

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

**SECTION 1.** (1) The Governor shall facilitate the organization and holding of one or more mediation sessions between representatives of the forest industry and representatives of environmental interests in accordance with the Memorandum of Understanding announced by the Governor on February 10, 2020. The Governor shall limit participation in the mediation sessions to not more than 12 representatives, but may not limit such third party assistance as the representatives may require.

(2) The purpose of the mediation sessions shall be to develop an approach to evaluate and jointly recommend substantive and procedural changes to Oregon Forest Practices Act laws and regulations to advance the attainment of federal regulatory assurances for aquatic and riparian-dependent species.

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

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

**SECTION 2.** Section 1 of this 2020 special session Act is repealed on January 2, 2023.

**SECTION 3.** The President of the Senate and the Speaker of the House of Representatives shall arrange for legislative committees related to natural resources to hold a joint informational hearing during the 2021 regular session of the Eighty-first Legislative Assembly regarding the mediation sessions described in section 1 of this 2020 special session Act. The committees shall, at a minimum, invite the Governor to submit testimony or documents at the joint informational hearing regarding the past and expected schedule and structure for the mediation process and such other information concerning the mediation sessions as the Governor deems reasonable and prudent to disclose.

**SECTION 4.** As used in sections 4 to 11 of this 2020 special session Act:

(1) "Department reporting system" means a forest activity electronic reporting and notice system operated by the State Forestry Department.

(2) "Nearby recipient" means a person registered under section 5 of this 2020 special session Act:

(a) Whose parcel location information is reconciled under section 5 (2) of this 2020 special session Act with a tax lot that is in whole or in part less than one mile from the edge of a proposed or scheduled pesticide application by helicopter to forestland; or

(b) Whose water intake location noted under section 5 (4) of this 2020 special session Act is less than one mile from the edge of a proposed or scheduled pesticide application by helicopter to forestland.

(3) "Pesticide":

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

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

(4) "Water use qualifying for a spray buffer" means the use of water:

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

(b) By one or more dwelling units for domestic animal consumption ancillary to residential or related use of a property;

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

(d) For livestock watering; or

(e) Supplied for community purposes through a municipal water system, a system operated by a federally recognized Indian tribe or a system operated by a private corporation. As used in this paragraph, "community purposes" includes, but is not limited to, uses described in paragraphs (a) to (d) of this subsection, commercial or industrial use, fire protection, watering of public parks and street cleaning.

**SECTION 5.** (1) A person may register with the State Forestry Department to receive notices of proposed or scheduled pesticide applications by helicopter to forestland near the residence of the person. To obtain registration, the person must provide the department with:

(a) A description of the parcel where the person resides;

(b) Proof satisfactory to the department that the person resides at the parcel; and

(c) Contact information for the person that, at a minimum, includes:

(A) A mailing address; and

(B) An electronic mail address or telephone number.

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

(3) A person appropriating surface water for a water use qualifying for a spray buffer may register with the department to receive notices of proposed or scheduled pesticide applications by helicopter to forestland near the water intake used by the person. To obtain registration, the person must provide the department with:

(a) The global positioning system coordinates for the water intake;

(b) If the water use qualifying for a spray buffer is subject to water right requirements, a permit, certificate, registration, limited license or order of determination for the water use;

(c) If the water use qualifying for a spray buffer is exempt from water right requirements, a description of the spring box or other type of water intake and of the type of water use;

(d) Unless established in documentation described in paragraph (b) of this subsection, an attestation that the person believes the person has a lawful entitlement to make the water use qualifying for a spray buffer;

(e) An attestation that the person controls the works at the point of diversion for the water use qualifying for a spray buffer; and

- (f) Contact information for the person that, at a minimum, includes:
  - (A) A mailing address; and
  - (B) An electronic mail address or telephone number.

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

**SECTION 6.** (1) To the extent of any conflict between this section and ORS 527.610 to 527.770, the provisions of this section prevail.

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

(a) Identification of the pesticides likely to be used. The notice may not identify any pesticides that are not likely to be used.

(b) Identification of the forestland units to receive pesticide application.

(c) Identification of a 90-day period within which the pesticide application is to occur.

(d) Contact information for the operator, timber owner or landowner providing the notice that, at a minimum, includes a mail address, electronic mail address and telephone number.

(e) Any information required by State Board of Forestry rules.

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

(4) If a pesticide application is not completed during the 90-day period identified in a notice, the operator, timber owner or landowner must send a new notice before commencing or completing the pesticide application. Notwithstanding ORS 527.670, if the new notice is sent in the same calendar year as the original notice, the 90-day period identified in the new notice must be seven or more days after the date the new notice is provided to the department.

**SECTION 7.** (1) Upon receipt of a notice under section 6 (2) of this 2020 special session Act, a State Forestry Department reporting system shall provide the operator, timber owner or landowner that provided the notice with a list of, and contact information for, any nearby recipients for the proposed pesticide application.

(2) Two weeks after receiving a notice under section 6 (2) of this 2020 special session Act, and on the date of receipt of any new notice under section 6 (4) of this 2020 special session Act, the department shall send notice of the proposed pesticide application to the electronic mail address or telephone number of each nearby recipient for the application. The notice sent by the department must include, but need not be limited to, the location and nature of the proposed pesticide application and the 90-day period within which the pesticide application may occur, and the mailing address, electronic mail address and telephone number supplied as contact information by the operator, timber owner or landowner that provided notice of the proposed pesticide application under section 6 of this 2020 special session Act.

**SECTION 8.** (1) An operator, timber owner or landowner that sends notice under section 6 of this 2020 special session Act of a proposed pesticide application by helicopter to forestland shall notify the State Forestry Department prior to the pesticide application by helicopter being made. A notice under this section must:

(a) Be made by electronic communication to a department reporting system;

(b) Be sent to the department no later than 7 p.m. on the day preceding the pesticide application;

(c) Specify the day following the notice as a day for pesticide application by helicopter;

(d) Identify the forestland units to receive pesticide application on the specified day; and

(e) Contain any additional information required by State Board of Forestry rules.

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

(3) Upon receipt of a notice under this section, the department shall send the schedule information for the pesticide application and forestland unit identification to the electronic mail address or telephone number of each nearby recipient to which the department sent notice of the proposed pesticide application under section 7 of this 2020 special session Act.

**SECTION 9.** (1) If a forestland unit identified in a notice sent under section 8 of this 2020 special session Act receives an incomplete pesticide application on the date specified in the notice, the operator, timber owner or landowner shall send a notice of incompleteness to a State Forestry Department reporting system no later than 24 hours after the end of the date specified for the application in the notice. The notice of incompleteness shall consist of designating the forestland units to which an incomplete pesticide application by helicopter was made. Entry of a notice of incompleteness does not affect the requirement to send notice under section 8 of this 2020 special session Act before completing the pesticide application.

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

(3) The department shall make an electronic listing of the forestland units that were identified in the notice under section 8 of this 2020 special session Act available to the operator, timber owner or landowner in a format that allows the operator, timber owner or landowner to electronically designate:

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

(b) Forestland units from the list on which pesticide application is complete, when sending a completion verification.

**SECTION 10.** (1) As used in this section, "spray season" means a period that:

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

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

(2) If an operator, timber owner or landowner fails to timely send a notice under section 8 of this 2020 special session Act or timely send a notice of incompleteness or completion verification under section 9 of this 2020 special session Act for one or more forestland units, or any combination of such failures on the same day:

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

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

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

**SECTION 11.** (1) If the State Forestry Department receives a notice under section 8 of this 2020 special session Act, at the beginning of the 90-day period identified in the notice, the department shall designate the forestland units identified in the notice as being in available status. Except as provided in subsection (2) of this section, the department shall terminate the available status of a forestland unit after 90 days.

(2) Upon receiving a notice under section 8 of this 2020 special session Act specifying a date on which a pesticide application by helicopter is to be made, the department shall change the designation of any forestland unit identified in the notice to pending status.

(3) Upon receiving a notice of incompleteness under section 9 of this 2020 special session Act, the department shall change the designation of any forestland unit identified in the notice to incomplete status.

(4) Upon receiving a completion verification under section 9 of this 2020 special session Act, the department shall change the designation of any forestland unit identified in the completion verification to completed status.

(5) The department shall change the designation of a forestland unit from pending status if, at 11:59 p.m. on the day following the pesticide application date specified for the forestland unit in a notice under section 8 of this 2020 special session Act, the department has not received a notice of incompleteness or completion verification for the forestland unit. Subject to subsection (1) of this section, the department shall return a forestland unit described in this subsection from pending status to available status.

**SECTION 12.** (1) As used in this section, “department reporting system” has the meaning given that term in section 4 of this 2020 special session Act.

(2) Sections 4 to 11 of this 2020 special session Act apply to pesticide applications occurring on or after:

(a) July 1, 2021; or

(b) If the State Chief Information Officer gives public notice prior to July 1, 2021, that the State Forestry Department reporting system lacks the required capacity for the carrying out of sections 4 to 11 of this 2020 special session Act, the earlier of:

(A) July 1, 2022; or

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

**SECTION 13.** (1) As used in this section, “department reporting system” has the meaning given that term in section 4 of this 2020 special session Act.

(2) The State Forestry Department shall develop a system to allow nondepartment messages to nearby recipients described in section 7 (1) of this 2020 special session Act, notices under section 8 of this 2020 special session Act and notices of incompleteness or completion verifications under section 9 of this 2020 special session Act to be sent electronically using mobile telephone equipment to access a department reporting system. The department shall make the access system compatible with, at a minimum, the two most commonly used types of mobile telephone operating systems.

**SECTION 14.** (1) As used in this section:

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

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

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

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

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

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

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

(c) A health provider.

(3)(a) The center shall forward a request received under subsection (2) of this section to the pesticide operator that is the subject of the request. A pesticide operator that receives a request from the center shall send the center the daily spray records and geographic in-

formation system data possessed or accessible to the pesticide operator concerning pesticide applications by helicopter to forestland identified in the request.

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

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

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

(5) Records and data sent or received under this section are not public records for purposes of ORS 192.311 to 192.478.

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

(a) "Interfere":

(A) Means to use force, violence or action that impedes a pesticide application by helicopter to forestland.

(B) Does not mean:

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

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

(b) "Nearby recipient" has the meaning given that term in section 4 of this 2020 special session Act.

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

(a) \$1,000, if during the five years before the date of the interference the person has not previously been found to have committed a violation under this section; or

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

(3) For purposes of this section, there is a conclusive presumption that interference is intentional if performed by a nearby recipient who was sent information under section 8 (3) of this 2020 special session Act concerning the pesticide application.

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

(a) "Department reporting system," "pesticide" and "water use qualifying for a spray buffer," have the meanings given those terms in section 4 of this 2020 special session Act.

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

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

(d) "School" means the campus of:

(A) A Head Start program;

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

(C) The Oregon School for the Deaf;

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

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

(F) A public or private college or university.

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

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

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

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

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

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

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

(c) Subject to subsection (4) of this section, less than 300 feet from a water intake for a water use qualifying for a spray buffer:

(A) Within the same sixth-level hydrologic unit as a water source for water use qualifying for a spray buffer that is registered under section 5 of this 2020 special session Act; or

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

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

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

(A) 75 feet;

(B) The required vegetated buffer; or

(C) A riparian management area existing in State Board of Forestry rules on the effective date of this 2020 special session Act within which vegetation retention and special management practices are required; or

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

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

**SECTION 17.** Section 16 of this 2020 special session Act applies to pesticide applications made on or after January 1, 2021.

**SECTION 18.** The State Board of Forestry shall adopt rules to make 2017 board rules regarding salmon, steelhead and bull trout applicable for the Siskiyou Georegion.

**SECTION 19.** The State Board of Forestry shall make the rules adopted by the board under section 18 of this 2020 special session Act effective on January 1, 2021.

**SECTION 20.** (1) As used in this section, "department reporting system" and "water use qualifying for a spray buffer" have the meanings given those terms in section 4 of this 2020 special session Act.

(2) The State Forestry Department shall record in the department reporting system any points of diversion inventoried by the Water Resources Department that are:

(a) For a water use qualifying for a spray buffer; and

(b) Mapped with sufficient precision to allow the State Forestry Department to implement buffers under section 16 (2)(c) of this 2020 special session Act.

(3) The State Forestry Department shall periodically review Water Resources Department inventory information for points of diversion and update State Forestry Department reporting system information as necessary to comply with subsection (2) of this section.

**SECTION 20a.** The State Forestry Department shall begin recording inventoried points of diversion in the department reporting system as required by section 20 of this 2020 special

session Act no later than 60 days after the operative date of section 20 of this 2020 special session Act.

**SECTION 20b.** (1) As used in this section, “department reporting system” and “water use qualifying for a spray buffer” have the meanings given those terms in section 4 of this 2020 special session Act.

(2) Except as provided in subsection (3) of this section, the State Forestry Department and the Water Resources Department shall, in the manner provided in ORS 192.245, submit a report to the Legislative Assembly during the 2022 regular session:

(a) Stating the number of points of diversion that have been recorded in the State Forestry Department reporting system under section 20 of this 2020 special session Act;

(b) Estimating the extent to which points of diversion for water use qualifying for a spray buffer remain to be inventoried; and

(c) Estimating the resources required for the Water Resources Department to identify points of diversion, whether already inventoried or remaining to be inventoried, with sufficient precision to allow the State Forestry Department to identify those points of diversion qualifying for a spray buffer and implement buffers under section 16 (2)(c) of this 2020 special session Act.

(3) If section 20 of this 2020 special session Act becomes operative on or after the date that the 2022 regular session of the Legislative Assembly adjourns sine die, the departments shall submit the report required by this section to the Legislative Assembly during the 2023 regular session.

**SECTION 21.** Section 20 of this 2020 special session Act becomes operative on the date sections 4 to 11 of this 2020 special session Act become applicable to pesticide applications as determined under section 12 of this 2020 special session Act.

**SECTION 22.** This 2020 special session Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2020 special session Act takes effect on its passage.

Passed by Senate June 26, 2020

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 26, 2020

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2020

Approved:

.....M.,....., 2020

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2020

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Bev Clarno, Secretary of State