

## FISCAL IMPACT OF PROPOSED LEGISLATION

81st Oregon Legislative Assembly – 2022 Regular Session  
Legislative Fiscal Office

Measure: SB 1546 - A

*Only Impacts on Original or Engrossed  
Versions are Considered Official*

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### Measure Description:

Establishes Elliott State Research Forest consisting of lands formerly constituting Elliott State Forest.

### Government Unit(s) Affected:

Bonding, Confederated Tribes of Siletz, Counties, Department of Forestry (ODF), Department of State Lands (DSL), Public Universities, Confederated Tribes of Grand Ronde, Confederated Tribes of Warm Springs and Coquille Indian Tribe, Department of Fish and Wildlife (ODFW), Department of Justice (DOJ), Oregon Judicial Department (OJD), Oregon State Treasurer (OST), Department of Administrative Services (DAS)

### Summary of Fiscal Impact:

Costs related to the measure may require budgetary action - See analysis.

### Analysis:

SB 1546 - A decouples the Elliott State Forest from the Common School Fund and management of the State Forester, and establishes the publicly owned Elliott State Research Forest. The State Land Board is to determine the lands constituting the Elliott State Research Forest by resolution before January 1, 2024.

This measure creates the Elliott State Research Forest Authority, a body that is tasked with operating and overseeing the Forest and necessary infrastructure. The Authority is governed by a seven- or nine-member Board of Directors appointed by the State Land Board immediately after this measure becomes operative, on January 1, 2024. The Board of Directors also includes the Dean of the College of Forestry at Oregon State University (OSU), who is a nonvoting member.

Before the measure is operative, the following tasks must be completed on or before July 1, 2023:

- The State Land Board ensures that financial obligations to the Common School Fund related to the Elliott State Forest are satisfied.
- The State Land Board votes to decouple the Elliott State Forest from the Common School Fund and authorizes actions necessary to transfer the forest to management described in the measure.
- The National Marine Fisheries Service and the United States Fish and Wildlife Service jointly publish a notice of the availability of a final habitat conservation plan for the Elliott State Forest pursuant to the Endangered Species Act of 1973 and a final environmental impact statement for the forest pursuant to the National Environmental Policy Act.
- The Department of State Lands (DSL) contracts for third-party expertise to provide input to inform the Department's review of a plan submitted by OSU to address the financial viability of forest operations and management consistent with the mission and management policies described in this measure, and DSL concludes that the plan demonstrates financial viability.
- The State Land Board approves a forest management plan for the Elliott State Research Forest.
- The Board of Trustees of OSU authorizes the university to participate in management of the Elliott State Research Forest.

The State Land Board is to report to an interim or regular committee of the Legislative Assembly related to forests on or before September 15, 2023, on whether all of the events described above occurred. If they do happen, the measure is largely operative on January 1, 2024. The measure takes effect on the 91st day after the Legislative Assembly adjourns sine die.

Decoupling the Forest from the Common School Fund is estimated to cost \$121 million General Fund. The Forest was appraised in 2016 at \$221 million, and \$100 million was paid to the Common School Fund from the proceeds of certificates of participation (COPs) that were authorized for issuance in 2019. The General Fund debt service for these COPs, including principal and interest payments are made by the Oregon Department of Forestry. Once decoupled, the Forest would transfer from DSL oversight to the newly established Elliott State Research Forest Authority. DSL anticipates no additional administrative costs as a result of this measure.

OSU's Elliot State Research Forest Proposal, which was accepted by the State Land Board in December 2020 and amended in April 2021, stated that a proposed Elliot State Research Forest is not self-sustaining from a financial perspective. The Proposal identified an average annual operating deficit of \$2.1 million for the first 50 years of operations. Additionally, the Proposal identified \$34.8 million in startup costs for infrastructure, facilities, and research equipment. The measure is unclear on what entity would cover any operating deficits and startup costs.

The Legislative Fiscal Office notes that there are some questions about how the Elliott State Research Forest Authority will operate that are not addressed in this measure. Additionally, this measure contains language regarding the Authority's budget and funding that require additional clarification.

#### Administration of the Elliott State Research Forest Authority

The Elliott State Research Forest Authority is not clearly defined in this measure as either a state agency, part of an existing state agency, a semi-independent agency, or some other type of administrative body.

This measure exempts the Authority and the Board of Directors from ORS 183.310 to 183.497 (part of the Administrative Procedures Act); these statutes relate to adoption of rules, contested cases, and judicial review and apply to all state agencies. Certain actions by the Authority and Board of Directors do remain subject to judicial review.

The measure also directs the Board of Directors to select the Authority's Executive Director, who serves for a term of four years and whose salary is fixed by the Board of Directors, instead of being determined by the state classification and compensation system.

While the Authority is required to report to and seek State Land Board approval for some operations, the language of the bill indicates that Authority does also, in some regards, operate independently of State Land Board oversight. The Authority's Board of Directors, after considering public comments, may approve or deny annual budgets, biennial operations reports and plans, recreation plans, education plans, sales of carbon credits or entry into easements or other encumbrances of lands, any proposed amendments to OSU's Elliott State Research Forest Proposal, any submission to federal or state agencies that relates to the forest, or any funding requests made to federal or state agencies or the Legislative Assembly. Through the Board of Directors, the Authority may enter into and administer contracts and agreements; oversee management of the Elliott State Research Forest; participate in available ecosystem services or forestry carbon programs and markets, or enter into easements; hold and ensure compliance with permits, certifications, and permissions from federal, state, and local entities; work and partner with owners of surrounding land on land management; raise funds and advance cross-sector partnerships to further the mission and management policies for the forest and support forest-related programs; and accept and expend proceeds derived from management of the forest, including proceeds derived from marketing, registering and transfer or sale of forest carbon, ecosystem services, forest products or easements. These proceeds are to be used to support the financial obligations of the Authority, conduct research or undertake other program activities in the forest, and create financial reserves to ensure the long-term financial integrity and stability of the Authority as a self-supporting entity.

The Authority's Board of Directors must receive input and approval from the State Land Board in order to approve or deny a forest management plan and any future amendments, any expansion or exchange of lands in the forest, or any amendments to the habitat conservation plan. The Board of Directors must also submit biennial programmatic reviews of Authority operations to the State Land Board. The Board of Directors must submit annual operations reports to the State Land Board in the six calendar years following the operative date of January 1, 2024.

#### Elliott State Research Forest Authority budget

This measure establishes the Elliott State Research Forest Account, separate and distinct from the General Fund. Moneys in the account may be invested, and moneys are continuously appropriated to the Elliott State Research Forest Authority for carrying out this measure, under the supervision and direction of the State Land Board. The Authority may apply for grants and accept gifts. The measure notes that the Board of Directors may request funding for state-funded debt service; any moneys requested and appropriated by the Legislative Assembly to pay debt service for state bonds must be held by the State Treasurer pursuant to an agreement entered into by the State Treasurer and the Board of Directors.

The Legislative Fiscal Offices notes that absent additional information on the Authority's type of entity, it is unclear whether an account in State Treasury that is continuously appropriated to the Authority should be established.

Additionally, because the Authority, as an entity, is not clearly defined in this bill, it is unclear how this entity will fit into the state budget process, and if the Authority will independently submit a biennial budget request to the Governor and Legislature, or if the Authority's budget will be part of another agency's budget. The Authority is not specifically exempted from the state budget process by this measure, and therefore assumed to be subject to the state budgeting process and legislative oversight.

Finally, this measure does include some possible revenue-generating activities of the Elliott State Research Forest Authority including funding derived from marketing, registering and transfer or sale of forest carbon, ecosystem services, forest products or easements. Though, the OSU's Elliot State Research Forest Proposal identified potential revenues derived from these activities, it is not clear how the Forest would be supported if these revenues are found insufficient to fund operations of the Elliott State Research Forest.

#### Elliott State Research Forest Authority bonding

This measure authorizes the Board of Directors to request the State Treasurer to issue revenue bonds for capital costs related to owning, operating or administering the Elliott State Research Forest. The Board of Directors may request the State Treasurer to sell revenue bonds, to be known as Elliott State Research Forest development revenue bonds, in an amount authorized under ORS 286A.035. The bonds do not constitute a general obligation of the state, and are not a lien on any lands in the Elliott State Research Forest. Revenue bonds may be secured only by moneys in the Elliott State Research Forest Account.

The measure also states that the Board of Directors may request the State Treasurer to issue bonds for financing under Article XI-Q of the Oregon Constitution to be used in connection with owning and operating the Elliott State Research Forest. The Legislative Fiscal Office notes that Article XI-Q general obligation bonds are governed by the State Constitution and statutory authority to request bonds still would not permit bonds to be issued for ineligible entities or non-permitted uses. The Authority may not be an eligible entity to request Article XI-Q general obligation bonds directly as authorization for the such bonds would need to be part of a state agency budget. Additionally, operating costs are not an eligible use of Article XI-Q general obligation bond proceeds, which must be used for real or personal property that is or will be owned or operated by the State of Oregon.

Finally, the measure allows certificates of participation to be issued for capital projects or purchases related to owning, operating or administering the Elliott State Research Forest. The measure also removes the statutory

authority for COPs to be issued to finance the release of all or a portion of the Elliott State Forest from the Common School Fund. The Legislative Fiscal Office notes that \$100 million in COPs were issued in 2019 for this purpose and it would be appropriate to retain this language in statute until the outstanding COPs are paid off in 2039.

Impacts on other state agencies

There is likely to be no or minimal fiscal impact for Counties, Department of Forestry, Department of Fish and Wildlife, Oregon State Treasurer, Department of Administrative Services, Department of Justice, and Oregon Judicial Department.

OSU will have ongoing costs for forest management, starting in 2024. The Board of Directors is to contract with OSU for implementation of forest management operations consistent with mission and management policies included in this measure, and a biennial operations plan, unless implementation of forest management operations is otherwise agreed to by the State Land Board, Board of Directors, and OSU. However, those costs are indeterminate at this time. As noted above, OSU's Elliot State Research Forest Proposal identified an annual operating deficit of \$2.1 million for the first 50 years and startup costs of \$34.8 million.