

SB 1501 A STAFF MEASURE SUMMARY**Senate Committee On Natural Resources and Wildfire Recovery****Action Date:** 02/08/22**Action:** Do pass with amendments and requesting referral to Ways and Means. (Printed A-Engrossed.)**Vote:** 4-0-1-0**Yeas:** 4 - Golden, Heard, Patterson, Prozanski**Exc:** 1 - Kennemer**Fiscal:** Fiscal impact issued**Revenue:** No revenue impact**Prepared By:** Beth Patrino, LPRO Analyst**Meeting Dates:** 2/1, 2/3, 2/8**WHAT THE MEASURE DOES:**

On or before November 30, 2022, directs the Board of Forestry (Board) to adopt **single rule package** consistent with requirements of the Private Forest Accord Report (PFA Report) dated ____, to the extent requirements in PFA Report do not contravene statutory requirements, and amend or repeal rules that implement Forest Practices Act (FPA) and Harvest Type; Water Quality Regulation (ORS 527.610 – .770) in effect on effective date of Act as needed to conform to rules adopted consistent with PFA Report. Establishes rulemaking process requirements. Authorizes State Fish and Wildlife Commission (Commission) to adopt, amend, or repeal rules needed to conform with single rule package adopted by Board. Specifies that rules package applies to operation for which notification to State Forester is filed pursuant to ORS 527.670(6). Limits to a one-year extension the authority of State Forester to extend deadlines related to fish buffers if electronic reporting and notice system is not updated as needed to implement requirements of PFA Report; authorizes additional extensions by Board. On or before November 30, 2025, directs Board to initiate rulemaking related to **post-disturbance harvest of trees** that, but for the disturbance, would not be harvested; specifies that Act provision related to rule on aquatic resources does not apply to this rulemaking. Directs Board to initiate and prioritize rulemaking on **tethered logging** not later than three years after effective date of Act. Declares legislative intent that person is not entitled to **just compensation** under ORS 195.305 - .336 for restriction placed on real property by rule adopted or amended by Board in single rule package and after Board has considered reports from Adaptive Management Program Committee and Independent Research and Science Team. Directs Oregon Department of Forestry (ODF) to procure specified **landslidemodeling services** not later than May 1, 2023. Exempts procurement from Public Contracting Code. On or before December 31, 2022, directs Board to submit to National Marine Fisheries Service and U.S. Fish and Wildlife Service a proposed **Habitat Conservation Plan (HCP)** consistent with PFA Report and an application for an **Incidental Take Permit (ITP)** for taking of species addressed in PFA Report. Establishes **pass-through protection** for agreements under federal Endangered Species Act (ESA). Prohibits Board from establishing **riparian prescriptions** that result in alternative minimum riparian buffer widths or lengths less than those set forth in PFA Report. Defines “**small forestland minimum option**” and “common ownership.” Establishes requirements for operator to follow **small forestland minimum option** and basis for ODF to allow exceptions. Authorizes Board to adopt rules to implement this section. Directs Board to adopt by rule a **Small Forestland Investment in Stream Habitat Program** as part of single rule package. Establishes purpose of program to provide grants to certain small forestland owners to fund specified projects. Sets grant eligibility requirements. Requires Small Forestland Owner Assistance Office in ODF to coordinate with Oregon Department of Fish and Wildlife (ODFW) to prioritize grants for projects on high conservation value sites as described in PFA Report. Requires annual report on program and submittal to Legislative Assembly no later than September 15th each year. Establishes requirements for person taking **beaver** on privately owned forestland, other than small forestland. Directs Commission to adopt rules to

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implement requirements related to taking of beaver on or before November 30, 2022. Prohibits person from soliciting or accepting a fee for trapping beaver on privately owned forestland other than small forestland unless trapping occurs pursuant to Act. Prohibits sale or exchange of beaver pelt unless trapping in compliance with Act. Establishes 12-member **Private Forest Accord Mitigation Advisory Committee** to Commission and ODFW. Establishes committee member appointment criteria and responsibilities. Directs Commission to establish a **Private Forest Accord Grant Program** to fund projects that mitigate impacts of forest practices by listed actions. Establishes program administration parameters. Establishes **Private Forest Accord Mitigation Subaccount** in Oregon Conservation and Recreation Fund. Establishes uses of subaccount. Requires ODFW and Oregon Conservation and Recreation Advisory Committee to jointly submit biennial report to Legislative Assembly on subaccount. Requires ODFW and PFA Mitigation Advisory Committee to submit biennial report to Legislative Assembly on subaccount expenditures. Establishes state policy that regulation of forest practices for **protection of aquatic species** shall, in addition to other statutory requirements, be subject to process of adaptive management. Directs Board to establish by rule on or before November 30, 2022, an **adaptive management program** and sets requirements on program. Establishes 10-member **Adaptive Management Program Committee** (Committee) and **Independent Research and Science Team** (IRST) as advisory to Board. Establishes membership and appointment process and directs Board to adopt rules describing in detail role and obligation of both. Authorizes Board to adopt, amend, or repeal a rule described in ORS 527.714 (1)(c) that relates to **aquatic resources** only after soliciting and considering reports from Committee and IRST, unless legislation provides specific exemption. Adds definitions of "aquatic resource" and "significant violation" to Oregon FPA. Directs State Forester or representative to conduct a program of **inspections of forestland** within operating areas of operations for which modifications are filed at regular intervals to assess compliance. Establishes when inspections may occur. Authorizes State Forester to petition circuit court for a warrant to inspect forestland and authorizes court to issue warrant under specified conditions. Directs Board to adopt rules requiring persons who file notifications to inform State Forester when operations are complete and authorizes State Forester to use photogrammetric mapping to determine if operations are complete or otherwise establish a program of monitoring compliance with ORS 527.610 - .770 and rules. Requires that rules limit discretion of person conducting **compliance monitoring**. Authorizes State Forester to require financial assurance before conducting new operation if within preceding three-year period person has a history of significant violation that shows a pattern of willful disregard for FPA requirements or rules or orders adopted or issued thereunder. Raises certain civil penalty maximum from \$5,000 to \$10,000. If history of significant violations exists showing pattern of willful disregard, authorizes State Forester to issue civil penalty not to exceed \$50,000 per violation. Revises requirements for Board rules, including economic analysis. Adds provisions to list of violations that are Class A misdemeanors. Adds provisions to failure to comply statute that may incur a civil penalty. States that nothing in specified sections of Act affect the treaty or other rights of **Indian tribes**, beneficial ownership interest in land held in trust by the United States for an Indian tribe, or land held by an Indian tribe. Directs Board to develop a process for an Indian tribe to elect to join as an applicant for a HCP consistent with terms and requirements applicable to private forestland under PFA. Authorizes Board to adopt rules to implement provisions related to **pesticide application**. Directs Board to annually **report to legislative committee(s) related to forestry** on progress implementing the PFA Report. **Appropriates** ____ General Fund. Establishes **contingent operative dates** based on issuance of ITP related to approved HCP that is consistent with PFA Report and that Board has not made a finding that HCP imposes more than a de minimus difference in economic or resource impacts. Requires Board to make such a finding within 45 days of petition by author of PFA Report. Specifies Commission must amend rules as needed to conform with Board action on or before 120th day after Board finding. Specifies that timeline for Board action if ITP is subsequently revoked or invalidated begins after all appeals are exhausted. Establishes related reporting requirements. Repeals amendments to existing statutes under specified circumstances. Declares emergency, effective upon passage.

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ISSUES DISCUSSED:

- Proposed changes to the Forest Practices Act in the Private Forest Accord Report
- Process and participants in negotiations that led to the Accord
- Challenges faced by small woodland owners

EFFECT OF AMENDMENT:

Replaces the measure.

BACKGROUND:

The Oregon Forest Practices Act (FPA) was first enacted by the legislature in 1971. The FPA establishes standards for all commercial activities involving the establishment, management, or harvesting of trees on Oregon's forestland, including building and maintaining roads, harvesting, applying pesticides, and replacing harvested trees.

The federal Endangered Species Act (ESA) of 1973 protects listed species by preventing the "take" of those species without a permit. A Habitat Conservation Plan (HCP) is a plan developed to protect an endangered species and to support an application for an incidental take permit. According to the U.S. Fish and Wildlife Service, an HCP "... describe(s) the anticipated effects of the proposed taking; how those impacts will be minimized, or mitigated; and how the HCP is to be funded."

Senate Bill 1602 (2020 First Special Session) directed the Governor to facilitate mediation sessions between the forest industry and environmental interests on changes to the Oregon FPA in accordance with a Memorandum of Understanding announced by the Governor on February 10, 2020. The purpose of the mediation sessions was to recommend substantive and procedural changes to Oregon FPA laws and regulations to advance the attainment of federal regulatory assurances for aquatic and riparian-dependent species. Senate Bill 5711 (2020 First Special Session) appropriated funds to pay the costs of contracted services for this mediation. On October 31, 2021, the Governor announced that the parties had reached an agreement. The agreement is memorialized in the Private Forest Accord Report. The agreement directs changes to the FPA and regulations, the development of a HCP, and the issuance of an incidental take permit under the federal ESA.

Senate Bill 1501 A would direct the Oregon Board of Forestry to adopt a single rule package on or before November 30, 2022 to implement the Private Forest Accord.