

SB 1501 -1 STAFF MEASURE SUMMARY

Senate Committee On Natural Resources and Wildfire Recovery

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 Board of Forestry (Board) 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 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. Establishes applicability of rules adopted or amended in single rule package. On or before November 30, 2025, directs Board to adopt rules related to **post-harvest disturbance**; 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 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 US 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 “alternative practice option” and “common ownership.” Establishes requirements for operator to follow **alternative practice 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 Owner 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. Requires person taking **beaver** on privately-owned forestland to **report** to ODFW, including reasons, location, and number of beavers taken. Requires ODFW to annually submit a summary of takings to Commission and make summary available on website. Prohibits person or designee from taking beaver on privately owned forestland, other than small forestland (ORS 527.678), unless person first requests ODFW address issues motivating taking and waits 30 days after making the request. Directs ODFW to first make non-lethal attempt to relocate beaver. Allows person to take beaver if threatening or damaging infrastructure. Requires ODFW to make attempts to nonlethally relocate beavers and develop a program for voluntarily relocating beavers as resources allow. Directs Commission to adopt rules to 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

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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 **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 Forest Practices Act. 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 that 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 3-year period person committed significant violation. 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. Establishes considerations. 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. 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 **Board finding** that HCP does not impose more than a ____ difference in economic or resources impacts, at a landscape level, relative to single rules package. Establishes related reporting requirements. Repeals amendments to existing statutes under specified circumstances. Declares emergency, effective upon passage.

ISSUES DISCUSSED:

- Private Forest Accord
- Participants in negotiations leading to Accord
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EFFECT OF AMENDMENT:

-1 Replaces measure. Revisions to introduced measure include, but are not limited to: Requires Oregon Department of Forestry (ODF) to ensure the Private Forest Accord Report (Report) remains publicly available on ODF website. Authorizes Board of Forestry (Board) to make minor changes to specified rules in rules package on or before July 1, 2023, as needed to conform with Report. Specifies Fish and Wildlife Commission (Commission) authority to adopt, amend, repeal rules as need to conform to rules package is only be as needed to conform to

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rules package. 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 Report; authorizes additional extensions by Board. Revises authority of Board to initiate post-disturbance harvest rulemaking to clarify authority applies to harvest that, but for the disturbance, would not be harvested. Specifies tethered logging rulemaking is not subject to requirement that Board consider reports from Adaptive Management Program Committee (Committee) and Independent Research and Science Team (IRST), but Board may consider such reports. Revises definition of "common ownership" to specify entity in which an individual owns a "significant" interest. Names option "small forestland minimum option" in place of "alternative practice option." Revises program name to "Small Forestland Investment in Stream Habitat Program." Specifies road condition assessment must cover entire parcel of land where proposed project to be grant funded will occur. Revises authority of landowner or designee to take a beaver on owner's forestland to add requirement that beaver apparently poses threat to infrastructure. Authorizes use of funds in Private Forest Accord Mitigation Subaccount for administration of Private Forest Accord Grant Program. Directs Private Forest Accord Mitigation Advisory Committee (Committee) to solicit grant applications. Revises direction to Board when establishing adaptive management program by rule to be consistent with framework set forth in Private Forest Accord. Subject to available funds, directs Board to award participation grant applications for Committee and IRST. Requires that certain IRST members be included on Team at all times and directs Team to strive for full consensus in decision-making. Deletes requirement that Board appoint first Team members by November 30, 2022. Revises requirements related to Board rulemaking on aquatic resources and consideration of Committee and Team reports. Revises definition of "significant violation" to include continued operation in contravention of specified order issued by State Forester. Clarifies direction to Board to adopt rules that establish a program for determining when operations for which notifications have been submitted have been conducted. Revises financial assurance requirement to apply to new operation if State Forester makes finding that operator, timber owner or landowner has a history of significant violations that show a pattern of willful disregard for specified law, rule or order. Clarifies role of Committee and Team as submitting reports to Board that review the new or increased standard, not recommending adoption of rule. Add new section addressing the effect of measure on Indian tribes stating nothing in specified sections of Act apply to 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 habitat conservation plan consistent with terms and requirements applicable to private forestland under Private Forest Accord. Revises contingent operative dates to clarify circumstances under which policies and amendments remain in effect, including that Board has not made a finding that habitat conservation plan imposes more than a de minimus difference in economic or resource impacts. Requires Board to make such a finding concerning whether more than a de minimus difference is imposed within 45 days of petition by author of Report. Specifies Commission must amend rules as needed to conform with Board action on or before 120th day after Board finding. Clarifies that timeline for Board action if incidental take permit is subsequently revoked or invalidated begins after all appeals are exhausted. Changes dates of required report by Board to legislative committee regarding issuance of incidental take permit and whether petition was submitted regarding Board finding to February 1, 2028. Requires Board to report promptly to legislative committees if incidental take permit is revoked or invalidated.

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 the building and maintaining roads, harvesting, applying pesticides, and replacing harvested trees.

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The federal Endangered Species Act 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 supports an application for an incidental take permit. According to the US 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 reach an agreement.