

# House Bill 2161

Sponsored by Representatives SMITH DB, SCHARF (Presession filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Makes certain changes to calculation of small forestland owner tax credit.

Provides that certain requirements related to forest practices do not apply to operations on land within exclusive farm use zone.

## A BILL FOR AN ACT

1  
2 Relating to forestry; creating new provisions; and amending ORS 527.680 and 527.685 and sections  
3 22, 23, 25, 43 and 44, chapter 33, Oregon Laws 2022, and section 4, chapter 34, Oregon Laws  
4 2022.

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

## SMALL FORESTLAND OWNER TAX CREDIT

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8  
9 **SECTION 1.** Section 4, chapter 34, Oregon Laws 2022, is amended to read:

10 **Sec. 4.** (1) The amount of the tax credit allowed under section 2 [*of this 2022 Act*], **chapter 34,**  
11 **Oregon Laws 2022**, shall be the sum of:

12 (a) The certified stumpage value of **all** standing timber in [*that portion of the forest conservation*  
13 *area*] **a no-harvest buffer** that is not harvested as a result of using the standard practice harvest  
14 restrictions in lieu of the small forest owner minimum option, using the standard measuring tech-  
15 niques of professional foresters;

16 (b) The cost to the small forestland owner of establishing the stumpage value, including the cost  
17 of appraisal performed by a professional forester, and of filing and recording a deed restriction as  
18 described in section 3 (3) [*of this 2022 Act*], **chapter 34, Oregon Laws 2022**; and

19 (c) If applicable, [*one-half of*] the certified stumpage value of **all** retained timber in a dry channel  
20 area adjacent to the forest conservation area.

21 [*(2) If the small forestland owner is barred from using the small forest owner minimum option by*  
22 *the horizontal lineal feet limitation applicable to fifth field watersheds, the certified stumpage value*  
23 *described in subsection (1)(a) of this section shall be multiplied by 125 percent.*]

24 [(3)] **(2)** The applicable stumpage values under this section shall be the values as of the date of  
25 filing a notification of operation under ORS 527.670, as described in section 3 (1)(a) [*of this 2022*  
26 *Act*], **chapter 34, Oregon Laws 2022**, and shall be calculated using one of the following methods:

27 (a) The conversion return method, in which the volume of timber being retained is determined  
28 by species and log grades, and a value is established from current delivered log price information,  
29 less a reasonable cost for harvest and delivery, for the area in which the retained timber would  
30 ordinarily be sold.

31 (b) The actual comparison method, which may be used if the timber being retained is similar in

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 species and log grades to the timber being harvested, and which is calculated using actual revenues  
2 from the timber being harvested by the small forestland owner in the harvest area adjacent to the  
3 forest conservation area.

4 (c) The cash flow modeling method, in which the value of standing timber is determined by using  
5 the projected volume of the stand over a harvest rotation based on species and site class, deter-  
6 mining the value at harvest age and then discounting the value to the present date using an interest  
7 rate equal to the direct farm ownership loan interest rate of the Farm Service Agency of the United  
8 States Department of Agriculture.

9 [(4)] (3) Costs, including the cost of an appraisal and the cost of filing and recording a deed  
10 restriction, may be included in the credit amount only to the extent that the amount attributable  
11 to those costs is not claimed as an income tax deduction by the taxpayer.

12  
13 **EXCLUSIVE FARM USE ZONES**

14  
15 **SECTION 2. Rules adopted pursuant to sections 2, 4, 6 and 7, chapter 33, Oregon Laws**  
16 **2022, do not apply to activities on land within an exclusive farm use zone described in ORS**  
17 **215.203.**

18 **SECTION 3.** Section 22, chapter 33, Oregon Laws 2022, is amended to read:

19 **Sec. 22.** (1) As used in this section:

20 (a) “Beaver” means a member of the species *Castor canadensis*.

21 (b) “Forestland” has the meaning given that term in ORS 527.620.

22 (2) A person that takes a beaver on privately owned forestland **that is not within an exclusive**  
23 **farm use zone described in ORS 215.203** shall report the taking to the State Department of Fish  
24 and Wildlife, including the reason for the taking, the location of the taking and the number of  
25 beavers taken.

26 (3) The department shall:

27 (a) Annually submit a summary of the takings of beaver reported under subsection (2) of this  
28 section to the State Fish and Wildlife Commission to help the commission better understand the  
29 scale of trapping on privately owned forestland.

30 (b) Make the summary described in paragraph (a) of this subsection available to the public on  
31 a department website.

32 (4) The commission shall adopt rules to implement this section.

33 **SECTION 4.** Section 23, chapter 33, Oregon Laws 2022, is amended to read:

34 **Sec. 23.** (1) As used in this section:

35 (a) “Beaver” means a member of the species *Castor canadensis*.

36 (b) “Forest practices” has the meaning given that term in ORS 527.620.

37 (c) “Forestland” has the meaning given that term in ORS 527.620.

38 (d) “Small forestland” means forestland whose owner owns or holds common ownership interest  
39 in less than 5,000 acres of forestland in this state.

40 (2) Notwithstanding ORS 498.012 (1), an owner of forestland, other than small forestland, **that**  
41 **is not within an exclusive farm use zone described in ORS 215.203**, or a designee of the owner,  
42 may take a beaver on the owner’s forestland only if:

43 (a) The beaver apparently poses a threat to infrastructure.

44 (b) The owner or a designee of the owner first requests that the State Department of Fish and  
45 Wildlife address the threat to infrastructure apparently posed by the beaver.

1 (c) The owner or a designee of the owner waits 30 days after making the request described in  
2 paragraph (b) of this subsection before taking the beaver.

3 (3) If the department receives a request under subsection (2)(b) of this section, the department  
4 shall make a reasonable attempt to nonlethally relocate the beaver, as department resources allow,  
5 or otherwise address the threat to infrastructure apparently posed by the beaver, in consultation  
6 with the owner or a designee of the owner.

7 (4) Notwithstanding subsection (2) of this section and ORS 498.012 (1), if a beaver on privately  
8 owned forestland damages or imminently threatens infrastructure, an owner of forestland, other than  
9 small forestland, or a designee of the owner, may take the beaver without submitting a request to  
10 the department under subsection (2) of this section.

11 (5) An owner, or a designee of an owner, that takes a beaver under subsection (2) or (4) of this  
12 section must report the taking as described in section 22 [of this 2022 Act], **chapter 33, Oregon**  
13 **Laws 2022**.

14 (6) In consultation with persons engaged in forest practices and other interested stakeholders,  
15 the department shall:

16 (a) Make reasonable attempts to nonlethally relocate beavers, as department resources allow.

17 (b) Develop a program for voluntarily relocating beavers.

18 (7) Notwithstanding ORS 496.162 (3), the State Fish and Wildlife Commission shall adopt rules  
19 to implement this section.

20 **SECTION 5.** Section 25, chapter 33, Oregon Laws 2022, is amended to read:

21 **Sec. 25.** (1) As used in this section:

22 (a) “Forestland” has the meaning given that term in ORS 527.620.

23 (b) “Small forestland” has the meaning given that term in section 23 [of this 2022 Act], **chapter**  
24 **33, Oregon Laws 2022**.

25 (2) A person may not solicit or accept a fee for trapping a beaver on privately owned forestland  
26 other than small forestland **that is not within an exclusive farm use zone described in ORS**  
27 **215.203**, unless the trapping occurs pursuant to section 23 (2) or (4) [of this 2022 Act], **chapter 33,**  
28 **Oregon Laws 2022**.

29 (3) A person that traps a beaver on privately owned forestland other than small forestland **that**  
30 **is not within an exclusive farm use zone described in ORS 215.203** may not sell or exchange the  
31 pelt of the beaver, unless the trapping occurs pursuant to section 23 (2) or (4) [of this 2022 Act],  
32 **chapter 33, Oregon Laws 2022**.

33 **SECTION 6.** Section 43, chapter 33, Oregon Laws 2022, is amended to read:

34 **Sec. 43.** (1) The State Forester, or a representative of the State Forester, shall conduct a pro-  
35 gram of inspections of forestland within the operating areas of operations for which notifications  
36 are filed pursuant to ORS 527.670 (6), at regular intervals, to assess compliance with ORS 527.610  
37 to 527.770 and rules and orders adopted or issued thereunder.

38 (2) The inspection may occur:

39 (a) On or after the date on which notification is filed pursuant to ORS 527.670 (6), but not more  
40 than three years after the date on which the State Forester learns that the operation has been  
41 completed.

42 (b) Only at a reasonable time, absent consent or a warrant.

43 (3) The person conducting the inspection shall:

44 (a) Advise the operator, timber owner or landowner that the inspection is being made pursuant  
45 to the law and is limited in scope to the operation subject to the relevant notification.

1 (b) Ensure that the inspection is tailored to assessing compliance with ORS 527.610 to 527.770  
2 and rules and orders adopted or issued thereunder.

3 (4) The State Forester may petition the circuit court of this state having jurisdiction over the  
4 forestland for a warrant authorizing the State Forester or a representative of the State Forester to  
5 inspect the forestland.

6 (5) The court may issue a warrant if:

7 (a) The State Forester or a representative of the State Forester has attempted inspection con-  
8 sistent with subsections (1) to (3) of this section and access to all or part of the forestland was ac-  
9 tually or constructively denied; or

10 (b) The State Forester has reasonable cause to believe that a violation of ORS 527.610 to 527.770  
11 or a rule or order adopted or issued thereunder has occurred.

12 **(6) Notwithstanding subsection (1) of this section, the State Forester, or a representative**  
13 **of the State Forester, may not conduct an inspection under this section on land within an**  
14 **exclusive farm use zone described in ORS 215.203.**

15 **SECTION 7.** Section 44, chapter 33, Oregon Laws 2022, is amended to read:

16 **Sec. 44.** (1) As used in this section, “photogrammetric mapping” has the meaning given that  
17 term in ORS 672.002.

18 (2) To aid in monitoring compliance with ORS 527.610 to 527.770 and rules adopted thereunder,  
19 the State Board of Forestry shall adopt rules that:

20 (a) Require persons that file notifications pursuant to ORS 527.670 (6) to inform the State  
21 Forester when the operations are complete, within a reasonable time after completion;

22 (b) Authorize the State Forester to use a program of photogrammetric mapping to determine  
23 whether operations for which notifications have been filed pursuant to ORS 527.670 (6) have been  
24 completed; or

25 (c) Otherwise establish a program for determining when operations for which notifications have  
26 been filed pursuant to ORS 527.670 (6) have been completed.

27 (3) Rules described in subsection (2)(b) or (c) of this section:

28 (a) Must limit the discretion of the person conducting the compliance monitoring.

29 **(b) May not apply to operations on land within an exclusive farm use zone described in**  
30 **ORS 215.203.**

31 **SECTION 8.** ORS 527.680, as amended by section 45, chapter 33, Oregon Laws 2022, is amended  
32 to read:

33 527.680. (1) Whenever the State Forester determines that an operator has committed a violation  
34 under ORS 527.990 (1), the State Forester may issue and serve a citation upon the operator or au-  
35 thorized representative. The State Forester shall cause a copy of the citation to be mailed or de-  
36 livered to the timber owner and landowner. Whenever the State Forester determines that the  
37 landowner has failed to comply with the reforestation rules under ORS 527.710, the State Forester  
38 may issue and serve a citation upon the landowner or authorized representative. Each citation is-  
39 sued under this section shall specify the nature of the violation charged and any damage or unsat-  
40 isfactory condition that has occurred as the result of such violation.

41 (2) Whenever a citation is served pursuant to subsection (1) of this section, the State Forester:

42 (a) Shall issue and serve upon the landowner or operator or authorized representative an order  
43 directing that the landowner or operator cease further violation. If the order is served upon an op-  
44 erator, the State Forester shall cause a copy of such order to be mailed or delivered to the timber  
45 owner and landowner; and

1 (b) May issue and serve an order upon the landowner or operator and shall cause a copy of such  
 2 order to be mailed or delivered to the timber owner and landowner, directing the landowner or op-  
 3 erator, where practical and economically feasible, to make reasonable efforts to repair the damage  
 4 or correct the unsatisfactory condition specified in the citation within a period specified by the  
 5 State Forester.

6 (3) In the event the order issued under subsection (2)(a) of this section has not been complied  
 7 with, and the violation specified in such order is resulting in continuing damage, the State Forester  
 8 by temporary order may direct the landowner or operator to cease any further activity in that  
 9 portion of the operation that is resulting in such damage. Such temporary order shall be in effect  
 10 until the date of the expiration of the period as prescribed in subsection (4) of this section or until  
 11 the date that the violation ceases, whichever date occurs first.

12 (4) A temporary order issued under subsection (3) of this section shall be served upon the  
 13 landowner or operator or authorized representative, and the State Forester shall cause a copy of  
 14 such temporary order to be mailed or delivered to the operator, timber owner and landowner. If  
 15 requested by the operator, timber owner or landowner, the State Board of Forestry, following the  
 16 appeal procedures of ORS 527.700, must hold a hearing on the temporary order within five working  
 17 days after the receipt by the board of the request. A temporary order issued and served pursuant  
 18 to subsection (3) of this section shall remain in effect not more than five working days after such  
 19 hearing unless the order is sooner affirmed, modified or revoked by the board.

20 (5) If a landowner or operator fails to comply with a final order issued under subsection (2)(b)  
 21 of this section within the time specified in the order, or if the landowner or operator fails to comply  
 22 with a final order imposing civil penalties for violation of any provision of the Oregon Forest  
 23 Practices Act, the State Forester may issue an order that prohibits the affected landowner or oper-  
 24 ator from conducting any new operations on any forestland in this state until the landowner or op-  
 25 erator has complied with the order to correct an unsatisfactory condition, make repair or pay the  
 26 civil penalty, as the case may be, to the satisfaction of the State Forester.

27 (6) The State Forester may require an operator, timber owner or landowner to provide financial  
 28 assurance before conducting a new operation if the State Forester has, within the preceding three-  
 29 year period, made a finding under ORS 527.685 (6) applicable to the operator, timber owner or  
 30 landowner.

31 **(7) Notwithstanding subsection (6) of this section, the State Forester may not require**  
 32 **financial assurance before an operator, timber owner or landowner conducts a new operation**  
 33 **on land within an exclusive farm use zone described in ORS 215.203.**

34 **SECTION 9.** ORS 527.685, as amended by section 46, chapter 33, Oregon Laws 2022, is amended  
 35 to read:

36 527.685. (1) The State Board of Forestry shall by rule establish the amount of civil penalty that  
 37 may be imposed for a particular violation. Except as provided in subsections (5) and (6) of this sec-  
 38 tion, a civil penalty may not exceed:

39 (a) \$10,000 per violation.

40 (b) **\$5,000 per violation, if the violation occurs on land within an exclusive farm use zone**  
 41 **described in ORS 215.203.**

42 (2) In imposing a penalty authorized by this section, the State Forester may consider the fol-  
 43 lowing factors:

44 (a) The past history of the person incurring a penalty in taking all feasible steps or procedures  
 45 necessary or appropriate to correct any violation.

1 (b) Any prior violations of statutes, rules, orders and permits pertaining to the Oregon Forest  
2 Practices Act.

3 (c) The gravity and magnitude of the violation.

4 (d) Whether the violation was repeated or continuous.

5 (e) Whether the cause of the violation was an unavoidable accident, negligence or an intentional  
6 act.

7 (f) The size and type of ownership of the operation.

8 (g) Any relevant rule of the board.

9 (h) The cooperativeness of the person incurring the penalty and the person's efforts, if any, to  
10 correct the violation.

11 (3) The penalty imposed under this section may be remitted or mitigated upon such terms and  
12 conditions as the board determines to be proper and consistent with the public benefit. Upon the  
13 request of the person incurring the penalty, the board shall consider evidence of the economic and  
14 financial condition of the person in determining whether a penalty shall be remitted or mitigated.

15 (4) The board, by rule, may delegate to the State Forester, upon such conditions as deemed  
16 necessary, all or part of the authority of the board provided in subsection (3) of this section to as-  
17 sess, remit or mitigate civil penalties.

18 (5) For a violation of ORS 527.745, or rules for reforestation adopted pursuant to ORS 527.745,  
19 the State Forester may impose a civil penalty in an amount equal to the estimated cost of reforest-  
20 ing lands pursuant to ORS 527.690.

21 (6) If the State Forester makes a finding that an operator, timber owner or landowner has a  
22 history of significant violations that shows a pattern of willful disregard for the requirements of ORS  
23 527.610 to 527.770 or rules or orders adopted or issued thereunder, the State Forester may impose  
24 a civil penalty in an amount not to exceed \$50,000 per significant violation. In imposing the penalty,  
25 the State Forester shall consider, in addition to the factors described in subsection (2) of this sec-  
26 tion:

27 (a) The degree, if any, to which the operator, timber owner or landowner derived economic  
28 benefit from the significant violation.

29 (b) The proportion of total operations conducted by the operator, timber owner or landowner  
30 related to which significant violations have occurred compared to the total number of operations  
31 conducted by the operator, timber owner or landowner, while accounting for the organizational  
32 structure of the operator, timber owner or landowner.

33 **(7) Notwithstanding subsection (6) of this section, the State Forester may not impose the**  
34 **civil penalty described in subsection (6) of this section for a significant violation that occurs**  
35 **on land within an exclusive farm use zone described in ORS 215.203.**

36  
37 **CAPTIONS**

38  
39 **SECTION 10. The unit captions used in this 2023 Act are provided for the convenience**  
40 **of the reader and do not become part of the statutory law of this state or express any leg-**  
41 **islative intent in the enactment of this 2023 Act.**