

House Bill 2656

Sponsored by Representatives SALINAS, POWER (Pre-session 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**.

Prohibits certain forest operation activities on forestland that supplies drinking water for one or more public water systems. Allows certain exemptions. Makes violation of prohibition Class A misdemeanor subject to maximum of \$6,250 fine, 364 days' imprisonment, or both. Makes violation of prohibition or terms and conditions of exemption subject to civil penalty as determined by State Board of Forestry rule, not to exceed \$5,000.

Requires written plan for forest operation conducted on forestland that supplies drinking water for one or more public water systems.

Limits State Board of Forestry adoption of best management practices for activities on forestland that supplies drinking water for one or more public water systems.

A BILL FOR AN ACT

1
2 Relating to forestland that supplies drinking water systems; creating new provisions; and amending
3 ORS 527.670, 527.765, 527.990 and 527.992.

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

5 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS 527.610 to**
6 **527.770.**

7 **SECTION 2. (1) As used in this section, "drinking water source" means an area deline-**
8 **ated as a drinking water supply for one or more public water systems under a source water**
9 **assessment program described in 42 U.S.C. 300j-13.**

10 **(2) Except as provided under subsection (3) of this section, the following are prohibited**
11 **on forestland that is a drinking water source:**

12 **(a) Harvest type 3 operations.**

13 **(b) Construction of a new logging road, unless the construction occurs in conjunction**
14 **with the vacating of a logging road that poses a high risk to a drinking water source envi-**
15 **ronment.**

16 **(c) Application of a pesticide as defined in ORS 634.006.**

17 **(d) Application of a fertilizer as defined in ORS 633.311.**

18 **(3) The State Forester, with the concurrence of the Department of Environmental Qual-**
19 **ity, may approve an exemption from subsection (2) of this section for activities conducted**
20 **as part of:**

21 **(a) An ecological restoration project designed to improve watershed conditions, reduce**
22 **the presence of invasive species or achieve other conservation objectives; or**

23 **(b) A third-party approved management plan to improve long-term carbon storage and**
24 **climate resiliency.**

25 **(4) A person seeking an exemption for activities described in subsection (3) of this section**
26 **shall file an application as provided by the State Board of Forestry by rule. The application**
27 **must include, but need not be limited to, a written plan describing the activities for which**

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 **an exemption is sought. The Environmental Quality Commission shall adopt rules establish-**
 2 **ing criteria that the department is to apply in determining whether to concur in approval**
 3 **of an application. The criteria must ensure that:**

4 (a) **Approved activities will not, directly or in combination with other factors, elevate risk**
 5 **of contamination in waters that are not impaired by, or at risk of, contamination by harmful**
 6 **algae blooms, sediment, turbidity or organic carbon; and**

7 (b) **Approved activities will reduce risk of contamination in waters that are impaired by,**
 8 **or at risk of, contamination by harmful algae blooms, sediment, turbidity or organic carbon.**

9 **SECTION 3.** ORS 527.670 is amended to read:

10 527.670. (1) The State Board of Forestry shall designate the types of operations for which notice
 11 shall be required under this section.

12 (2) The board shall identify by rule the types of operations that require a written plan.

13 (3) In addition to any other types of operations identified by the board, the board shall adopt
 14 rules to require a written plan for the following:

15 (a) An operation that occurs within 100 feet of a stream determined by the State Forester to
 16 be used by fish or for domestic use, unless:

17 (A) The board, by rule, provides that a written plan is not required because the operation will
 18 be conducted according to a general vegetation retention prescription described in administrative
 19 rule;

20 (B) The operation will not directly affect the riparian management area and the State Forester,
 21 acting under authority granted by a board rule, waives the written plan requirement; or

22 (C) The operation will be conducted pursuant to a stewardship agreement entered into under
 23 ORS 541.973.

24 (b) An operation that occurs within 100 feet of a resource site that is inventoried under ORS
 25 527.710 (3) as a significant wetland but is not classified by board rule as an estuary, unless:

26 (A) The board, by rule, provides that a written plan is not required because the operation will
 27 be conducted according to a general vegetation retention prescription described in administrative
 28 rule;

29 (B) The operation will not directly affect the riparian management area and the State Forester,
 30 acting under authority granted by a board rule, waives the written plan requirement; or

31 (C) The operation will be conducted pursuant to a stewardship agreement entered into under
 32 ORS 541.973.

33 (c) An operation that occurs within 300 feet of a resource site inventoried under ORS 527.710
 34 (3), other than a site described in paragraph (b) of this subsection, unless the operation:

35 (A) Will be conducted pursuant to a stewardship agreement entered into under ORS 541.973; and

36 (B) Is consistent with the purposes and policies of any relevant Safe Harbor Agreements or
 37 Candidate Conservation Agreements entered into between the State of Oregon and agencies of the
 38 United States Government, pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16
 39 U.S.C. 1531 et seq.) and federal regulations.

40 (d) **An operation that will be conducted on forestland that is a drinking water source as**
 41 **defined in section 2 of this 2019 Act.**

42 (4) The distances set forth in subsection (3) of this section are solely for the purpose of defining
 43 an area within which a hearing may be requested under ORS 527.700 and not the area to be pro-
 44 tected by the board's rules adopted pursuant to ORS 527.710 (3)(c).

45 (5) For the purpose of determining the distances set forth in subsection (3) of this section

1 “site” means the specific resource site and not any additional buffer area.

2 (6) An operator, timber owner or landowner, before commencing an operation, shall notify the
3 State Forester. The notification shall be on forms provided by the State Forester and shall include
4 the name and address of the operator, timber owner and landowner, the legal description of the
5 operating area, and any other information considered by the State Forester to be necessary for the
6 administration of the rules promulgated by the board pursuant to ORS 527.710. Promptly upon re-
7 ceipt of such notice, the State Forester shall provide a copy of the notice to whichever of the op-
8 erator, timber owner or landowner did not submit the notification. The State Forester shall provide
9 a copy of notices involving chemical applications to persons within 10 miles of the chemical appli-
10 cation who hold downstream surface water rights pursuant to ORS chapter 537, if such a person has
11 requested that notification in writing. The board shall adopt rules specifying the information to be
12 contained in the notice. All information filed with the State Forester pertaining to chemical appli-
13 cations shall be public record.

14 (7) An operator, timber owner or landowner that filed an original notification shall notify the
15 State Forester of any subsequent change in the information contained in the notification.

16 (8) Within six working days of receipt of a notice or a written plan filed under subsection (6)
17 or (7) of this section, the State Forester shall make a copy of the notice or written plan available
18 to any person who requested of the State Forester in writing that the person be provided with copies
19 of notice and written plan and who has paid any applicable fee established by the State Forester for
20 such service. The State Forester may establish a fee for providing copies of notices and written
21 plans under this subsection not to exceed the actual and reasonable costs. In addition, the State
22 Forester shall provide a copy of the notification to the Department of Revenue and the county
23 assessor for the county in which the operation is located, at times and in a manner determined
24 through written cooperative agreement by the parties involved.

25 (9) Persons may submit written comments pertaining to the operation to the State Forester
26 within 14 calendar days of the date the notice or written plan was filed with the State Forester
27 under subsection (2), (6) or (7) of this section. Notwithstanding the provisions of this subsection, the
28 State Forester may waive any waiting period for operations not requiring a written plan under
29 subsection (3) of this section, except those operations involving aerial application of chemicals.

30 (10) If an operator, timber owner or landowner is required to submit a written plan of operations
31 to the State Forester under subsection (3) of this section:

32 (a) The State Forester shall review a written plan and may provide comments to the person who
33 submitted the written plan;

34 (b) The State Forester may not provide any comments concerning the written plan earlier than
35 14 calendar days following the date that the written plan was filed with the State Forester nor later
36 than 21 calendar days following the date that the written plan was filed; and

37 (c) Provided that notice has been provided as required by subsection (6) of this section, the op-
38 eration may commence on the date that the State Forester provides comments or, if no comments
39 are provided within the time period established in paragraph (b) of this subsection, at any time after
40 21 calendar days following the date that the written plan was filed.

41 (11)(a) Comments provided by the State Forester, or by the board under ORS 527.700 (6), to the
42 person who submitted the written plan are for the sole purpose of providing advice to the operator,
43 timber owner or landowner regarding whether the operation described in the written plan is likely
44 to comply with ORS 527.610 to 527.770 and rules adopted thereunder. Comments provided by the
45 State Forester or the board do not constitute an approval of the written plan or operation.

1 (b) If the State Forester or the board does not comment on a written plan, the failure to com-
 2 ment does not mean that an operation carried out in conformance with the written plan complies
 3 with ORS 527.610 to 527.770 or rules adopted thereunder nor does the failure to comment constitute
 4 a rejection of the written plan or operation.

5 (c) If the State Forester or board determines that an enforcement action may be appropriate
 6 concerning the compliance of a particular operation with ORS 527.610 to 527.770 or rules adopted
 7 under ORS 527.610 to 527.770, the State Forester or board shall consider, but are not bound by,
 8 comments that the State Forester provided under this section or comments that the board provided
 9 under ORS 527.700.

10 (12) If the operation is required under rules described in subsection (3) of this section to have
 11 a written plan and comments have been timely filed under subsection (9) of this section pertaining
 12 to the operation requiring a written plan, the State Forester shall:

13 (a) Provide a copy of the State Forester’s review and comments, if any, to persons who submitted
 14 timely written comments under subsection (9) of this section pertaining to the operation; and

15 (b) Provide to the operator, timber owner and landowner a copy of all timely comments sub-
 16 mitted under subsection (9) of this section.

17 **SECTION 4.** ORS 527.765 is amended to read:

18 527.765. (1) The State Board of Forestry shall establish best management practices and other
 19 rules applying to forest practices as necessary to insure that to the maximum extent practicable
 20 nonpoint source discharges of pollutants resulting from forest operations on forestlands do not im-
 21 pair the achievement and maintenance of water quality standards established by the Environmental
 22 Quality Commission for the waters of the state. Such best management practices shall consist of
 23 forest practices rules adopted to prevent or reduce pollution of waters of the state. Factors to be
 24 considered by the board in establishing best management practices shall include, where applicable,
 25 but not be limited to:

- 26 (a) Beneficial uses of waters potentially impacted;
- 27 (b) The effects of past forest practices on beneficial uses of water;
- 28 (c) Appropriate practices employed by other forest managers;
- 29 (d) Technical, economic and institutional feasibility; and
- 30 (e) Natural variations in geomorphology and hydrology.

31 (2)(a) The board shall consult with the Environmental Quality Commission in adoption and re-
 32 view of best management practices and other rules to address nonpoint source discharges of
 33 pollutants resulting from forest operations on forestlands. **Except as provided in paragraph (b)**
 34 **of this subsection, the board may not establish a best management practice authorizing an**
 35 **activity prohibited under section 2 of this 2019 Act.**

36 **(b) The board may establish a best management practice authorizing an otherwise pro-**
 37 **hibited activity for which an exemption is approved under section 2 of this 2019 Act.**

38 (3)(a) Notwithstanding ORS 183.310 (8), upon written petition for rulemaking under ORS 183.390
 39 of any interested person or agency, the board shall review the best management practices adopted
 40 pursuant to this section. In addition to all other requirements of law, the petition must allege with
 41 reasonable specificity that nonpoint source discharges of pollutants resulting from forest operations
 42 being conducted in accordance with the best management practices are a significant contributor to
 43 violations of such standards.

44 (b) Except as provided in paragraph (c) of this subsection, if the board determines that forest
 45 operations being conducted in accordance with the best management practices are neither signif-

1 icantly responsible for particular water quality standards not being met nor are a significant con-
 2 tributor to violations of such standards, the board shall issue an order dismissing the petition.

3 (c) If the petition for review of best management practices is made by the Environmental Quality
 4 Commission, the board shall not terminate the review without the concurrence of the commission,
 5 unless the board commences rulemaking in accordance with paragraph (e) of this subsection.

6 (d) If a petition for review is dismissed, upon conclusion of the review, the board shall issue an
 7 order that includes findings regarding specific allegations in the petition and shall state the board's
 8 reasons for any conclusions to the contrary.

9 (e) If, pursuant to review, the board determines that best management practices should be re-
 10 viewed, the board shall commence rulemaking proceedings for that purpose. Rules specifying the
 11 revised best management practices must be adopted not later than two years from the filing date
 12 of the petition for review unless the board, with concurrence of the Environmental Quality Com-
 13 mission, finds that special circumstances require additional time.

14 (f) Notwithstanding the time limitation established in paragraph (e) of this subsection, at the
 15 request of the Environmental Quality Commission, the board shall take action as quickly as practi-
 16 cable to prevent significant damage to beneficial uses identified by the commission while the board
 17 is revising its best management practices and rules as provided for in this section.

18 **SECTION 5.** ORS 527.990 is amended to read:

19 527.990. (1) Subject to ORS 153.022, violation of ORS 527.670, 527.672, 527.676, 527.740, 527.750
 20 or 527.755 **or section 2 of this 2019 Act**, or any rule promulgated under ORS 527.710, is a Class
 21 A misdemeanor. Each day of operation in violation of an order issued under ORS 527.680 (3) shall
 22 be deemed to be a separate offense.

23 (2) Violation of ORS 527.260 (1) is a Class A misdemeanor. Violation of ORS 527.260 (3) is a
 24 Class C misdemeanor.

25 **SECTION 6.** ORS 527.992 is amended to read:

26 527.992. (1) In addition to any other penalty provided by law, any person who fails to comply
 27 with any of the following may incur a civil penalty in the amount adopted under ORS 527.685:

28 (a) The requirements of ORS 527.670, 527.672, 527.676, 527.740, 527.750 or 527.755.

29 (b) The terms or conditions of any order of the State Forester issued in accordance with ORS
 30 527.680.

31 (c) Any rule or standard of the State Board of Forestry adopted or issued pursuant to ORS
 32 527.710.

33 (d) Any term or condition of a written waiver, or prior approval granted by the State Forester
 34 pursuant to the rules adopted under ORS 527.710.

35 **(e) Section 2 of this 2019 Act or the terms and conditions of any exemption approved by**
 36 **the State Forester under section 2 of this 2019 Act.**

37 (2) Imposition or payment of a civil penalty under this section shall not be a bar to actions al-
 38 leging trespass under ORS 105.810, nor to actions under ORS 161.635 or 161.655 seeking to recover
 39 an amount based on the gain resulting from individual or corporate criminal violations.