

HB 4168-1
(LC 309)
2/19/20 (CDT/ps)

Requested by HOUSE COMMITTEE ON RULES (at the request of Governor Kate Brown)

**PROPOSED AMENDMENTS TO
HOUSE BILL 4168**

1 In line 2 of the printed bill, after “forestry” insert “; and declaring an
2 emergency”.

3 Delete line 4 and insert:

4 **“SECTION 1. (1) The Governor shall facilitate the organization and
5 holding of one or more mediation sessions between representatives of
6 the forest industry and representatives of environmental interests in
7 accordance with the Memorandum of Understanding announced by the
8 Governor on February 10, 2020. The Governor shall limit participation
9 in the mediation sessions to not more than 10 representatives.**

10 **“(2) The purpose of the mediation sessions shall be to develop an
11 approach to evaluate and jointly recommend substantive and proce-
12 dural changes to Oregon Forest Practices Act laws and regulations.**

13 **“(3) The Governor shall organize the mediation sessions with the
14 goal of fulfilling the purpose described in subsection (2) of this section
15 no later than 18 months after the effective date of this 2020 Act.**

16 **“(4) Except as provided in ORS 36.220 (1) to (4), mediation sessions
17 described in this section are not subject to ORS 36.220 to 36.238 or
18 192.610 to 192.690.**

19 **“SECTION 2. Section 1 of this 2020 Act is repealed on January 2,
20 2023.**

21 **“SECTION 3. In addition to and not in lieu of any other appropri-**

1 ation, there is appropriated to the Office of the Governor, for the
2 biennium ending June 30, 2021, out of the General Fund, the amount
3 of \$_____, which may be expended for the organization and holding
4 of mediation sessions described in section 1 of this 2020 Act.

5 **“SECTION 4. The President of the Senate and the Speaker of the**
6 **House of Representatives shall arrange for legislative committees re-**
7 **lated to natural resources to hold a joint informational hearing during**
8 **the 2021 regular session of the Eighty-first Legislative Assembly re-**
9 **garding the mediation sessions described in section 1 of this 2020 Act.**
10 **The committees shall, at a minimum, invite the Governor to submit**
11 **testimony or documents at the joint informational hearing regarding**
12 **the past and expected schedule and structure for the mediation process**
13 **and such other information concerning the mediation sessions as the**
14 **Governor deems reasonable and prudent to disclose.**

15 **“SECTION 5. As used in sections 5 to 12 of this 2020 Act:**

16 **“(1) ‘Beneficial use’ means the use of water:**

17 **“(a) For watering not more than one-half acre of lawn or noncom-**
18 **mercial garden;**

19 **“(b) By one or more dwelling units for domestic animal consump-**
20 **tion ancillary to residential or related use of a property;**

21 **“(c) By one or more dwelling units for household purposes or hu-**
22 **man consumption;**

23 **“(d) For livestock watering; or**

24 **“(e) Supplied for community purposes through a municipal water**
25 **system, a system operated by a federally recognized Indian tribe or a**
26 **system operated by a private corporation. As used in this paragraph,**
27 **‘community purposes’ includes, but is not limited to, uses described**
28 **in paragraphs (a) to (d) of this subsection, commercial or industrial**
29 **use, fire protection, watering of public parks and street cleaning.**

30 **“(2) ‘Department reporting system’ means a forest activity elec-**

1 **tronic reporting and notice system operated by the State Forestry**
2 **Department.**

3 **“(3) ‘Nearby recipient’ means a person registered under section 6**
4 **of this 2020 Act:**

5 **“(a) Whose parcel location information is reconciled under section**
6 **6 (2) of this 2020 Act with a tax lot that is in whole or in part less than**
7 **one mile from the edge of a proposed or scheduled pesticide application**
8 **by helicopter to forestland; or**

9 **“(b) Whose water intake location noted under section 6 (4) of this**
10 **2020 Act is less than one mile from the edge of a proposed or scheduled**
11 **pesticide application by helicopter to forestland.**

12 **“(4) ‘Pesticide’:**

13 **“(a) Except as provided in this subsection, has the meaning given**
14 **that term in ORS 634.006.**

15 **“(b) Does not include fertilizer. As used in this paragraph,**
16 **‘fertilizer’ means any substance, or any combination or mixture of**
17 **substances, that is designed for use primarily as a source of plant food,**
18 **for inducing increased plant growth or for producing any physical,**
19 **microbial or chemical change in the soil.**

20 **“SECTION 6. (1) A person may register with the State Forestry**
21 **Department to receive notices of proposed or scheduled pesticide ap-**
22 **plications by helicopter to forestland near the residence of the person.**
23 **To obtain registration, the person must provide the department with:**

24 **“(a) A description of the parcel where the person resides;**

25 **“(b) Proof satisfactory to the department that the person resides**
26 **at the parcel; and**

27 **“(c) Contact information that, at a minimum, includes a mailing**
28 **address, electronic mail address and telephone number for the person.**

29 **“(2) Upon the receipt of information under subsection (1) of this**
30 **section, the department shall reconcile the parcel location information**

1 with tax lot information and note the tax lot in a geospatial layer
2 maintained within a department reporting system.

3 “(3) A person appropriating surface water for beneficial use may
4 register with the department to receive notices of proposed or sched-
5 uled pesticide applications by helicopter to forestland near the water
6 intake used by the person. To obtain registration, the person must
7 provide the department with:

8 “(a) The global positioning system coordinates for the water intake;

9 “(b) If the beneficial use is subject to water right requirements, a
10 permit, certificate, registration, limited license or order of determi-
11 nation for the beneficial use;

12 “(c) If the beneficial use is exempt from water right requirements,
13 a description of the spring box or other type of water intake and of the
14 type of beneficial use;

15 “(d) Unless established in documentation described in paragraph (b)
16 of this subsection, an attestation that the person believes the person
17 has a lawful entitlement to make beneficial use of the water;

18 “(e) An attestation that the person controls the works at the point
19 of diversion for the beneficial use; and

20 “(f) Contact information that, at a minimum, includes a mailing
21 address, electronic mail address and telephone number for the person.

22 “(4) Upon the receipt of information under subsection (3) of this
23 section, the department shall note the location of the water intake in
24 a geospatial layer maintained within a department reporting system.

25 “SECTION 7. (1) To the extent of any conflict between this section
26 and ORS 527.610 to 527.770, the provisions of this section prevail.

27 “(2) Notwithstanding ORS 527.670, an operator, timber owner or
28 landowner proposing to conduct a pesticide application by helicopter
29 to forestland shall send the State Forestry Department notice of the
30 proposed pesticide application that includes the following:

1 “(a) Identification of the pesticides likely to be used. The notice
2 may not identify any pesticides that are not likely to be used.

3 “(b) Identification of the forestland units to receive pesticide appli-
4 cation.

5 “(c) Identification of a 90-day period within which the pesticide ap-
6 plication is to occur.

7 “(d) Contact information for the operator, timber owner or land-
8 owner.

9 “(e) Any information required by State Board of Forestry rules.

10 “(3) Except as provided in subsection (4) of this section, if the de-
11 partment reporting system indicates that the location of the proposed
12 pesticide application has one or more nearby recipients, the beginning
13 of the 90-day period identified in the notice under subsection (2)(c) of
14 this section must be 30 or more days after the date the notice is pro-
15 vided to the department.

16 “(4) If a pesticide application is not completed during the 90-day
17 period identified in a notice, the operator, timber owner or landowner
18 must send a new notice before commencing or completing the pesti-
19 cide application. Notwithstanding ORS 527.670, if the new notice is sent
20 in the same calendar year as the original notice, the 90-day period
21 identified in the new notice must be seven or more days after the date
22 the new notice is provided to the department.

23 “SECTION 8. (1) Upon receipt of a notice under section 7 (2) of this
24 2020 Act, a State Forestry Department reporting system shall provide
25 the operator, timber owner or landowner that provided the notice with
26 a list of, and contact information for, any nearby recipients for the
27 proposed pesticide application.

28 “(2) Two weeks after receiving a notice under section 7 (2) of this
29 2020 Act, and on the date of receipt of any new notice under section 7
30 (4) of this 2020 Act, the department shall send notice of the proposed

1 pesticide application to the electronic mail address or telephone num-
2 ber of each nearby recipient for the application. The notice sent by the
3 department must include, but need not be limited to, the location and
4 nature of the proposed pesticide application, the 90-day period within
5 which the pesticide application may occur and the contact information
6 for the operator, timber owner or landowner that provided notice of
7 the proposed pesticide application under section 7 of this 2020 Act.

8 **“SECTION 9. (1) An operator, timber owner or landowner that**
9 **sends notice under section 7 of this 2020 Act of a proposed pesticide**
10 **application by helicopter to forestland shall notify the State Forestry**
11 **Department prior to the pesticide application by helicopter being**
12 **made. A notice under this section must:**

13 **“(a) Be made by electronic communication to a department report-**
14 **ing system;**

15 **“(b) Be sent to the department no later than 7 p.m. on the day**
16 **preceding the pesticide application;**

17 **“(c) Specify the day following the notice as a day for pesticide ap-**
18 **plication by helicopter;**

19 **“(d) Identify the forestland units to receive pesticide application on**
20 **the specified day; and**

21 **“(e) Contain any additional information required by State Board of**
22 **Forestry rules.**

23 **“(2) The sending of a notice under subsection (1) of this section does**
24 **not limit the number of days on which a pesticide application by heli-**
25 **copter may be made. However, a separate notice is required for each**
26 **day that a pesticide application by helicopter is to be made. The**
27 **sending of a notice under subsection (1) of this section does not re-**
28 **quire that a pesticide application identified in the notice be conducted.**

29 **“(3) Upon receipt of a notice under this section, the department**
30 **shall send the schedule information for the pesticide application and**

1 forestland unit identification to the electronic mail address or tele-
2 phone number of each nearby recipient to which the department sent
3 notice of the proposed pesticide application under section 8 of this 2020
4 Act.

5 **“SECTION 10. (1) If a forestland unit identified in a notice sent**
6 **under section 9 of this 2020 Act receives an incomplete pesticide ap-**
7 **plication on the date specified in the notice, the operator, timber**
8 **owner or landowner shall send a notice of incompleteness to a State**
9 **Forestry Department reporting system no later than 24 hours after the**
10 **end of the date specified for the application in the notice. The notice**
11 **of incompleteness shall consist of designating the forestland units to**
12 **which an incomplete pesticide application by helicopter was made.**
13 **Entry of a notice of incompleteness does not affect the requirement to**
14 **send notice under section 9 of this 2020 Act before completing the**
15 **pesticide application.**

16 **“(2) An operator, timber owner or landowner that sends a notice**
17 **under section 9 of this 2020 Act shall send a completion verification**
18 **to a department reporting system no later than 24 hours after the**
19 **completion of the pesticide application. The completion verification**
20 **shall consist of designating the forestland units to which the pesticide**
21 **application by helicopter was made.**

22 **“(3) The department shall make an electronic listing of the**
23 **forestland units that were identified in the notice under section 9 of**
24 **this 2020 Act available to the operator, timber owner or landowner in**
25 **a format that allows the operator, timber owner or landowner to**
26 **electronically designate:**

27 **“(a) Forestland units from the list that have received an incomplete**
28 **pesticide application, when sending a notice of incompleteness; and**

29 **“(b) Forestland units from the list on which pesticide application**
30 **is complete, when sending a completion verification.**

1 **“SECTION 11. (1) As used in this section, ‘spray season’ means a**
2 **period that:**

3 **“(a) Begins on January 1 and ends on June 30 in the same calendar**
4 **year; or**

5 **“(b) Begins on July 1 and ends on December 31 in the same calendar**
6 **year.**

7 **“(2) If an operator, timber owner or landowner fails to timely send**
8 **a notice under section 9 of this 2020 Act or timely send a notice of**
9 **incompletion or completion verification under section 10 of this 2020**
10 **Act for one or more forestland units, or any combination of such**
11 **failures on the same day:**

12 **“(a) For the first day during a spray season on which one or more**
13 **failures occur, the State Forestry Department shall issue the land-**
14 **owner a warning.**

15 **“(b) For the second day during a single spray season on which one**
16 **or more failures occur, the department shall assess the landowner a**
17 **civil penalty that does not exceed \$1,000.**

18 **“(c) For a third day or any subsequent day during a single spray**
19 **season on which one or more failures occur, the department shall as-**
20 **sess the landowner a civil penalty that does not exceed \$5,000 per day.**

21 **“SECTION 12. (1) If the State Forestry Department receives a notice**
22 **under section 7 of this 2020 Act, at the beginning of the 90-day period**
23 **identified in the notice, the department shall designate the forestland**
24 **units identified in the notice as being in available status. Except as**
25 **provided in subsection (2) of this section, the department shall termi-**
26 **nate the available status of a forestland unit after 90 days.**

27 **“(2) Upon receiving a notice under section 9 of this 2020 Act speci-**
28 **fying a date on which a pesticide application by helicopter is to be**
29 **made, the department shall change the designation of any forestland**
30 **unit identified in the notice to pending status.**

1 **“(3) Upon receiving a notice of incompleteness under section 10 of this**
2 **2020 Act, the department shall change the designation of any**
3 **forestland unit identified in the notice to incomplete status.**

4 **“(4) Upon receiving a completion verification under section 10 of**
5 **this 2020 Act, the department shall change the designation of any**
6 **forestland unit identified in the completion verification to completed**
7 **status.**

8 **“(5) The department shall change the designation of a forestland**
9 **unit from pending status if, at 11:59 p.m. on the day following the**
10 **pesticide application date specified for the forestland unit in a notice**
11 **under section 9 of this 2020 Act, the department has not received a**
12 **notice of incompleteness or completion verification for the forestland**
13 **unit. Subject to subsection (1) of this section, the department shall**
14 **return a forestland unit described in this subsection from pending**
15 **status to available status.**

16 **“SECTION 13. (1) As used in this section, ‘department reporting**
17 **system’ has the meaning given that term in section 5 of this 2020 Act.**

18 **“(2) Sections 5 to 12 of this 2020 Act apply to pesticide applications**
19 **occurring on or after:**

20 **“(a) July 1, 2021; or**

21 **“(b) If the State Chief Information Officer gives public notice prior**
22 **to July 1, 2021, that the State Forestry Department reporting system**
23 **lacks the required capacity for the carrying out of sections 5 to 12 of**
24 **this 2020 Act, the earlier of:**

25 **“(A) July 1, 2022; or**

26 **“(B) The date on which the State Chief Information Officer gives**
27 **public notice that the department reporting system has the required**
28 **capacity.**

29 **“SECTION 14. (1) As used in this section, ‘department reporting**
30 **system’ has the meaning given that term in section 5 of this 2020 Act.**

1 “(2) The State Forestry Department shall develop a system to allow
2 nondepartment messages to nearby recipients described in section 8 (1)
3 of this 2020 Act, notices under section 9 of this 2020 Act and notices
4 of incompleteness or completion verifications under section 10 of this
5 2020 Act to be sent electronically using mobile telephone equipment
6 to access a department reporting system. The department shall make
7 the access system compatible with, at a minimum, the two most
8 commonly used types of mobile telephone operating systems.

9 “SECTION 15. (1) As used in this section:

10 “(a) ‘Daily spray records’ means records required of a pesticide op-
11 erator under ORS 634.146.

12 “(b) ‘Geographic information system data’ means the electronic lo-
13 cation data recorded during a pesticide application by helicopter.

14 “(c) ‘Health provider’ means a person holding a license, certificate
15 or permit issued under Oregon law to provide the diagnosis, treatment
16 or care of disease or injury in the ordinary course of business or
17 practice of a profession.

18 “(d) ‘Pesticide operator’ has the meaning given that term in ORS
19 634.006.

20 “(2) The Pesticide Analytical and Response Center shall accept re-
21 quests for a pesticide operator’s daily spray records and geographic
22 information system data concerning a pesticide application by heli-
23 copter to forestland from:

24 “(a) A unit of state government, as defined in ORS 174.111;

25 “(b) A law enforcement agency, as defined in ORS 181A.010; or

26 “(c) A health provider.

27 “(3)(a) The center shall forward a request received under subsection
28 (2) of this section to the pesticide operator that is the subject of the
29 request. A pesticide operator that receives a request from the center
30 shall send the center the daily spray records and geographic informa-

1 tion system data possessed or accessible to the pesticide operator
2 concerning pesticide applications by helicopter to forestland identified
3 in the request.

4 “(b) The pesticide operator shall send the requested daily spray re-
5 cord information to the center no later than 24 hours after receiving
6 the request. The pesticide operator shall send the requested geographic
7 information system data to the center no later than five business days
8 after receiving the request.

9 “(c) Upon receiving requested information from a pesticide opera-
10 tor, the center shall forward the information received to the request-
11 ing unit of state government, law enforcement agency or health
12 provider.

13 “(4) Failure of a pesticide operator to timely send records or data
14 as required under subsection (3) of this section is a violation subject
15 to a fine of not more than \$1,000 per request.

16 “(5) Records and data sent or received under this section are not
17 public records for purposes of ORS 192.311 to 192.478.

18 **“SECTION 16. (1) As used in this section:**

19 **“(a) ‘Interfere’:**

20 **“(A) Means to use force, violence or action that impedes a pesticide
21 application by helicopter to forestland.**

22 **“(B) Does not mean:**

23 **“(i) The memorializing of pesticide application activities through
24 photography, videotaping, audiotaping or other creation of an elec-
25 tronic record by a person on public property or on private property
26 where the person has a lawful right to be present; or**

27 **“(ii) Other activities to the extent that the activities are protected
28 under the First Amendment to the United States Constitution or Ar-
29 ticle I, section 8, of the Oregon Constitution.**

30 **“(b) ‘Nearby recipient’ has the meaning given that term in section**

1 5 of this 2020 Act.

2 “(2) A person that intentionally interferes with a pesticide applica-
3 tion by helicopter to forestland commits an unclassified violation
4 punishable by a fine of:

5 “(a) \$1,000, if the person has not previously been found to have
6 committed a violation under this section; or

7 “(b) \$5,000, if not more than five years before the date of the in-
8 terference the person was found to have committed a violation under
9 this section.

10 “(3) For purposes of this section, there is a conclusive presumption
11 that interference is intentional if performed by a nearby recipient who
12 was sent information under section 9 (3) of this 2020 Act concerning
13 the pesticide application.

14 **“SECTION 17. (1) As used in this section:**

15 “(a) ‘Beneficial use,’ ‘department reporting system’ and ‘pesticide’
16 have the meanings given those terms in section 5 of this 2020 Act.

17 “(b) ‘Flowing water’ means surface water is present at the time of
18 a pesticide application.

19 “(c) ‘Inhabited dwelling’ means a structure or part of a structure
20 used as a home, residence or sleeping place by a person maintaining
21 a household or by two or more persons maintaining a common
22 household, but does not include outbuildings, yard areas or other land
23 associated with the structure.

24 “(d) ‘School’ means the campus of:

25 “(A) A Head Start program;

26 “(B) A public or private institution offering instruction for all or
27 part of prekindergarten through grade 12;

28 “(C) The Oregon School for the Deaf;

29 “(D) A regional residential academy operated by the Oregon Youth
30 Authority;

1 **“(E) An education service district or community college; or**

2 **“(F) A public or private college or university.**

3 **“(e) ‘Sixth-level hydrologic unit’ means the cataloging unit level of**
4 **the 12-digit hydrologic unit mapping system developed by the Federal**
5 **Geographic Data Committee.**

6 **“(f) ‘Type D stream’ means a stream that has domestic use, but**
7 **does not have fish use.**

8 **“(g) ‘Type F stream’ means a stream that has fish use or has both**
9 **domestic use and fish use.**

10 **“(h) ‘Type N stream’ means a stream that does not have domestic**
11 **use or fish use.**

12 **“(2) Notwithstanding ORS 527.672, a person may not directly apply**
13 **pesticide by helicopter to forestland:**

14 **“(a) Less than 300 feet from an inhabited dwelling, unless the**
15 **landowner is the requester of the application;**

16 **“(b) Less than 300 feet from a school, unless the school board or**
17 **other governing body for the school is the requester of the application;**
18 **or**

19 **“(c) Subject to subsection (4) of this section, less than 300 feet from**
20 **a water intake for a beneficial use of water:**

21 **“(A) Within the same sixth-level hydrologic unit as a water source**
22 **for beneficial use that is registered under section 6 of this 2020 Act;**
23 **or**

24 **“(B) Within the same sixth-level hydrologic unit as a water source**
25 **for beneficial use that is identified by the State Forestry Department**
26 **and for which the location has been recorded in the department re-**
27 **porting system.**

28 **“(3) On forestland that is subject to ORS 527.610 to 527.770, a person**
29 **may not directly apply pesticide by helicopter near a stream:**

30 **“(a) That is identified by the department as a Type D stream or**

1 **Type F stream, within the greatest of:**

2 **“(A) 75 feet;**

3 **“(B) The required vegetated buffer; or**

4 **“(C) A riparian management area existing in State Board of**
5 **Forestry rules on the effective date of this 2020 Act within which veg-**
6 **etation retention and special management practices are required; or**

7 **“(b) That is identified by the department as a Type N stream and**
8 **has flowing water, within 50 feet.**

9 **“(4) The restrictions in subsection (2)(c) of this section are contin-**
10 **gent upon the water intake location being recorded in the department**
11 **reporting system.**

12 **“SECTION 18. Section 17 of this 2020 Act applies to pesticide appli-**
13 **cations made on or after January 1, 2021.**

14 **“SECTION 19. The State Board of Forestry shall adopt rules to**
15 **make 2017 board rules regarding salmon, steelhead and bull trout ap-**
16 **licable for the Siskiyou Georegion.**

17 **“SECTION 20. The State Board of Forestry shall make the rules**
18 **adopted by the board under section 19 of this 2020 Act effective on**
19 **January 1, 2021.**

20 **“SECTION 21. (1) As used in this section, ‘beneficial use’ and ‘de-**
21 **partment reporting system’ have the meanings given those terms in**
22 **section 5 of this 2020 Act.**

23 **“(2) The State Forestry Department, in collaboration with the Wa-**
24 **ter Resources Department, shall develop and maintain a comprehen-**
25 **sive inventory in the department reporting system of beneficial use**
26 **points of diversion that are located on forestland.**

27 **“SECTION 22. Section 21 of this 2020 Act becomes operative on the**
28 **date sections 5 to 12 of this 2020 Act become applicable to pesticide**
29 **applications as determined under section 13 of this 2020 Act.**

30 **“SECTION 23. This 2020 Act being necessary for the immediate**

1 **preservation of the public peace, health and safety, an emergency is**
2 **declared to exist, and this 2020 Act takes effect on its passage.”.**

3
