

Enrolled
Senate Bill 1501

Sponsored by Senator COURTNEY; Senators ARMITAGE, KENNEMER, Representatives CAMPOS, DEXTER, HELM, MCLAIN, NELSON, NOSSE, REARDON, REYNOLDS, WILLIAMS

CHAPTER

AN ACT

Relating to a negotiated agreement concerning private forestland; creating new provisions; amending ORS 105.810, 195.308, 496.252, 496.254, 527.620, 527.630, 527.680, 527.685, 527.714, 527.990, 527.992, 610.060 and 610.105; and declaring an emergency.

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

RULE PACKAGE

SECTION 1. Section 2 of this 2022 Act is added to and made a part of ORS 527.610 to 527.770.

SECTION 2. (1) The State Board of Forestry shall, as a single rule package following a single, consolidated rulemaking process:

(a) Adopt rules consistent with the requirements of the Private Forest Accord Report dated February 2, 2022, and published by the State Forestry Department on February 7, 2022, to the extent that requirements in the Private Forest Accord Report do not contravene statutory requirements.

(b) As needed to conform with the rules described in paragraph (a) of this subsection, and only as needed to conform with the rules described in paragraph (a) of this subsection, amend or repeal the rules in effect on the effective date of this 2022 Act that implement ORS 527.610 to 527.770.

(2) When adopting, amending or repealing rules as described in subsection (1) of this section, the board shall resolve any gaps or ambiguities in the requirements of the Private Forest Accord Report by:

(a) Referring to the intent and structure of the rules implementing ORS 527.610 to 527.770 that are in effect on the effective date of this 2022 Act; and

(b) Achieving the outcomes described in the Private Forest Accord Report.

(3) The department shall:

(a) Publish the Private Forest Accord Report.

(b) Ensure that the Private Forest Accord Report remains publicly available on a department website.

SECTION 3. (1) On or before November 30, 2022, the State Board of Forestry shall adopt the rule package described in section 2 of this 2022 Act.

(2) In developing the rule package, the board shall:

(a) Regularly and closely consult with representatives of the authors of the Private Forest Accord Report dated February 2, 2022, and published by the State Forestry Department on February 7, 2022, to ensure that the rule package is consistent with the intent of the report.

(b) Prioritize development of the rule package over other obligations to the extent possible.

(3) Adoption or amendment of rules included in the rule package is not subject to the requirements of ORS 183.333, 183.335 or 527.714 or section 39 of this 2022 Act.

(4) When adopting the rule package, the board is subject to the requirements of subsections (5) to (11) of this section.

(5) The board shall give notice of its intent to adopt the proposed rule package in the bulletin described in ORS 183.360 at least 30 days prior to the date proposed for adopting or amending the rules.

(6) The notice must include:

(a) A caption of not more than 15 words that reasonably identifies the subject matter of the rule package.

(b) An objective, simple and understandable statement summarizing the subject matter and purpose of the rule package in sufficient detail to inform a person that the person's interests may be affected, and the time, place and manner in which interested persons may present their views on the proposed rule package.

(c) A citation of the law the rule package is intended to implement.

(d) A full or abbreviated list of the principal documents, reports or studies, if any, prepared by or relied upon by the board in preparing the rule package and a statement of the location at which those documents are available for public inspection.

(7) The Secretary of State may omit the information described in subsection (6)(c) and (d) of this section from publication in the bulletin.

(8) After giving the notice, the board shall accept public comments for 30 days.

(9) After receiving public comments, the board may amend the draft rules in the proposed rule package without providing notice or accepting public comments.

(10) The board shall hold one public hearing before or during which interested persons may submit written or oral testimony.

(11) The board shall publish notice of the hearing in the bulletin at least 21 days before the hearing.

(12) The provisions of ORS 183.400, 183.410 and 183.480 apply to a petition concerning the validity or applicability of a rule adopted or amended as part of the rule package or a rule amended as described in subsection (13) of this section.

(13) After adopting the rule package, and on or before July 1, 2023, the board may amend rules that implement ORS 527.610 to 527.770 to make minor changes as needed to conform with the Private Forest Accord Report.

(14) Amendments described in subsection (13) of this section are not subject to the requirements of ORS 183.333, 183.335 or 527.714 or section 39 of this 2022 Act.

SECTION 4. (1) The State Fish and Wildlife Commission may adopt, amend or repeal rules as needed to conform with the rule package described in section 2 of this 2022 Act, but may only adopt, amend or repeal rules under this section as needed to conform with the rule package.

(2) The provisions of ORS 183.333 and 183.335 do not apply to an adoption, amendment or repeal of a rule under subsection (1) of this section that occurs on or before November 30, 2022.

(3) When adopting, amending or repealing rules under this section, the commission is subject to the requirements to which the State Board of Forestry is subject under section 3 (5) to (11) of this 2022 Act.

SECTION 5. (1) As used in this section:

- (a) “Common ownership” has the meaning given that term in section 16 of this 2022 Act.
- (b) “Small forestland” means forestland that has an owner that owns or holds common ownership interest in less than 5,000 acres of forestland in this state.
- (2) Rules adopted or amended as part of the rule package described in section 2 of this 2022 Act apply only to an operation for which a notification is filed under ORS 527.670 (6):
- (a) On or after January 1, 2024.
- (b) Before January 1, 2024, if the operation is not completed on or before December 31, 2023.
- (3) Notwithstanding subsection (2) of this section, rules adopted or amended as part of the rule package that relate to fish buffers apply to an operation, other than an operation on small forestland, for which a notification is filed on or after July 1, 2023.
- (4) If the State Forester determines that a forest activity electronic reporting and notice system operated by the State Forestry Department is not updated with the information necessary to implement the requirements of the Private Forest Accord Report dated February 2, 2022, and published by the department on February 7, 2022, in time for operations to reasonably comply with the requirements by January 1, 2024, the deadlines described in subsection (2) of this section for application of rules that do not relate to fish buffers:
- (a) May be extended by the State Forester for a period not to exceed one year; and
- (b) After an extension described in paragraph (a) of this subsection, may be extended by the State Board of Forestry only if the board finds that the additional extension is necessary.

POST-DISTURBANCE HARVEST RULEMAKING

- SECTION 6.** (1) Pursuant to the authority granted by ORS 527.710 and subject to the procedures set forth in ORS 527.714 for rules described in ORS 527.714 (1)(c), the State Board of Forestry shall initiate rulemaking concerning the post-disturbance harvest of trees that, but for the disturbance, would not be harvested under rules adopted, amended or repealed as part of the rule package described in section 2 of this 2022 Act.
- (2) The rulemaking:
- (a) Must be completed on or before November 30, 2025.
- (b) Is not subject to the requirements of section 39 of this 2022 Act.

TETHERED LOGGING RULEMAKING

- SECTION 7.** (1) Pursuant to the authority granted by ORS 527.710 and subject to the procedures set forth in ORS 527.714 for rules described in ORS 527.714 (1)(c), not more than three years after the effective date of this 2022 Act, the State Board of Forestry shall initiate rulemaking concerning tethered logging.
- (2) The board shall prioritize the rulemaking.
- (3) The rulemaking is not subject to the requirements of section 39 of this 2022 Act, but as part of the rulemaking, the board may solicit and consider reports that pertain to tethered logging from the Adaptive Management Program Committee and the Independent Research and Science Team described in sections 36 and 38 of this 2022 Act.

JUST COMPENSATION EXEMPTION

- SECTION 8.** The Legislative Assembly intends that a person is not entitled to just compensation under ORS 195.305 to 195.336 for any restriction placed on the use of real property by a rule adopted or amended by the State Board of Forestry:
- (1) As part of the rule package described in section 2 of this 2022 Act.

(2) After the board has considered reports that pertain to the rule from the Adaptive Management Program Committee and the Independent Research and Science Team described in sections 36 and 38 of this 2022 Act.

SECTION 9. ORS 195.308 is amended to read:

195.308. Notwithstanding the requirement to pay just compensation for certain land use regulations under ORS 195.305 (1), compensation is not due for:

(1) The enforcement or enactment of a land use regulation established in ORS 30.930 to 30.947, 527.310 to 527.370, 561.995, 569.360 to 569.495, 570.010 to 570.050, 570.105 to 570.190, 570.305, 570.310, 570.320 to 570.360, 570.405, 570.412, 570.420, 570.425, 570.450, 570.700 to 570.710, 570.755, 570.770, 570.775, 570.780, 570.790, 570.800, 570.995, 596.095, 596.100, 596.105, 596.393, 596.990 or 596.995 or in administrative rules or statewide plans implementing these statutes.

(2) The enforcement, adoption or amendment of a rule adopted or amended by the State Board of Forestry:

(a) As part of the rule package described in section 2 of this 2022 Act.

(b) After the board has considered reports that pertain to the rule from the Adaptive Management Program Committee and the Independent Research and Science Team described in sections 36 and 38 of this 2022 Act.

LANDSLIDE MODELING

SECTION 10. (1) The Legislative Assembly finds that:

(a) The requirements of the Private Forest Accord Report dated February 2, 2022, and published by the State Forestry Department on February 7, 2022, are premised on specific landslide modeling developed by a specific contractor.

(b) Implementation of the requirements is contingent on the ability to use the specific landslide modeling.

(c) Implementation of the requirements is time sensitive and requires rapid development of landslide modeling.

(d) Procurement of services pursuant to this section:

(A) Is unlikely to encourage favoritism in awarding public contracts or to substantially diminish competition for public contracts.

(B) Will substantially promote the public interest in a manner that could not otherwise be practically realized through a procurement subject to the requirements of the Public Contracting Code.

(2) The State Forestry Department shall:

(a) Procure services for development and application of the landslide modeling described in chapter 3 and appendix B of the Private Forest Accord Report.

(b) Ensure that the modeling is developed and incorporated into a forest activity electronic reporting and notice system operated by the department:

(A) In time to facilitate compliance with the deadlines described in section 5 (2) and (3) of this 2022 Act.

(B) Not later than May 1, 2023.

(3) The procurement required by this section is not subject to the requirements of the Public Contracting Code.

SUBMISSION OF HABITAT CONSERVATION PLAN

SECTION 11. The State Board of Forestry shall submit to the National Marine Fisheries Service and the United States Fish and Wildlife Service:

(1) A proposed habitat conservation plan consistent with the Private Forest Accord Report dated February 2, 2022, and published by the State Forestry Department on February 7, 2022.

(2) An application for an incidental take permit, supported by the habitat conservation plan, for the incidental taking of species addressed in the Private Forest Accord Report.

SECTION 12. (1) On or before December 31, 2022, the State Board of Forestry shall prepare and submit to the National Marine Fisheries Service and the United States Fish and Wildlife Service the habitat conservation plan described in section 11 of this 2022 Act.

(2) The board shall procure the services of a person to develop and draft the habitat conservation plan.

(3) Pursuant to ORS 279A.050 (6)(m) and notwithstanding ORS 279B.050, 279B.055, 279B.060, 279B.065 and 279B.070, the board may award a contract for the services without undertaking a process of competitive sealed bidding or competitive sealed proposals or soliciting competitive price quotes or competitive proposals.

(4) The board shall ensure that representatives of the authors of the Private Forest Accord Report dated February 2, 2022, and published by the State Forestry Department on February 7, 2022, are:

(a) Regularly and closely consulted concerning the development and drafting of the habitat conservation plan.

(b) Consulted if any question arises concerning the intent of the Private Forest Accord Report.

(5) The habitat conservation plan and application for an incidental take permit described in section 11 of this 2022 Act do not constitute rules for purposes of ORS 183.310 to 183.410 or 527.714.

PASS-THROUGH PROTECTION FOR ENDANGERED SPECIES ACT AGREEMENTS

SECTION 13. Section 14 of this 2022 Act is added to and made a part of ORS 527.610 to 527.770.

SECTION 14. If a person is party to an agreement with the National Marine Fisheries Service or the United States Fish and Wildlife Service under the federal Endangered Species Act of 1973 (16 U.S.C. 1531 to 1544) and is engaging in a forest practice in compliance with the agreement, the forest practice is not subject to provisions of ORS 527.610 to 527.770 or rules adopted thereunder that relate to protection of a species addressed in the agreement.

SMALL FORESTLAND OWNER PROVISIONS

SECTION 15. Sections 16 and 16a of this 2022 Act are added to and made a part of ORS 527.610 to 527.770.

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

(a) “Common ownership” means direct ownership by one or more individuals or ownership by a corporation, partnership, association or other entity in which an individual owns a significant interest.

(b) “Small forestland owner minimum option” means any small forestland owner minimum option available for small forestland owners pursuant to rules adopted by the State Board of Forestry under section 2 of this 2022 Act.

(2) The board may not establish riparian prescriptions that result in minimum riparian buffer widths or lengths that measure less than the minimum riparian buffer widths or lengths set forth in sections 5.3.1.3 and 5.3.1.4 of chapter 5 of the Private Forest Accord Report dated February 2, 2022, and published by the State Forestry Department on February 7, 2022.

(3)(a) An operator, timber owner or landowner may not follow a small forestland owner minimum option for an operation unless the department determines that, as of the date the department receives a notification related to the operation under ORS 527.670:

(A) The landowner of the forestland where the operation will occur owns or holds common ownership interest in less than 5,000 acres of forestland in this state;

(B) No more than an average yearly volume of two million board feet of merchantable forest products has been harvested from the landowner's forestland in this state, when averaged over the three years prior to the date the department receives the notification; and

(C) The landowner has submitted an affirmation to the department that it does not expect to exceed an average yearly volume of two million board feet of merchantable forest products to be harvested from the landowner's forestland in this state during the 10 years following the date the department receives the notification.

(b) Notwithstanding paragraph (a)(B) and (C) of this subsection, the department may allow a landowner to follow a small forestland owner minimum option if the landowner establishes to the department's reasonable satisfaction that any exceedance of the harvest limits set forth in paragraph (a)(B) or (C) of this subsection was or will be necessary to raise funds to pay estate taxes or for a compelling and unexpected obligation.

(4) The department may require a landowner to submit, as part of the notification required under ORS 527.670, any additional information or statements necessary to determine whether a landowner meets the requirements of subsection (3) of this section.

(5) The board may adopt any rules necessary to implement this section.

SECTION 16a. In any tax year that a tax credit allowed for use of the standard practice in lieu of the small forestland owner minimum option is not available to small forestland owners, State Board of Forestry rules must provide that restrictions on using the small forestland owner minimum option related to the horizontal feet limitation applicable to fifth field watersheds are not in effect.

SECTION 17. (1) The State Board of Forestry shall adopt by rule a Small Forestland Investment in Stream Habitat Program.

(2) The purpose of the program is to provide grants to certain small forestland owners to fund projects that:

(a) Result in environmental benefits to fish species addressed in the Private Forest Accord Report dated February 2, 2022, and published by the State Forestry Department on February 7, 2022; or

(b) Mitigate risks to natural resources arising from the construction, operation or maintenance of forest roads or related activities.

(3) The Small Forestland Owner Assistance Office established by section 19 of this 2022 Act shall implement and administer the program.

(4)(a) To be eligible for a grant under the program, a landowner must:

(A) Own or hold common ownership interest in less than 5,000 acres of forestland in this state.

(B) Submit documentation showing that no more than an average yearly volume of two million board feet of merchantable forest products has been harvested from the landowner's forestland in this state, when averaged over the three years prior to the date the office receives the grant application.

(C) Affirm to the office that the landowner does not expect to exceed an average yearly volume of two million board feet of merchantable forest products to be harvested from the landowner's forestland in this state during the 10 years following the date the office receives the grant application.

(D) Have on file with the State Forestry Department a road condition assessment that includes assessment of all the roads, abandoned roads, culverts and fish passage barriers located anywhere in the parcel of land on which the project for which grant funding is requested will occur.

(b) For purposes of this subsection, a landowner must be considered to hold common ownership interest in forestland if the forestland is owned by the landowner directly or by

a corporation, partnership, association or other entity in which the landowner owns a significant interest.

(c) Notwithstanding paragraph (a)(B) and (C) of this subsection, a landowner may be eligible for a grant if the landowner establishes to the department's reasonable satisfaction that any exceedance of the harvest limits set forth in paragraph (a)(B) or (C) of this subsection was or will be necessary to raise funds to pay estate taxes or for a compelling and unexpected obligation.

(5) In administering and implementing the program, the office shall coordinate with the State Department of Fish and Wildlife to prioritize awarding grants for projects on high conservation value sites, as described in section 5.3.5.3 of chapter 5 of the Private Forest Accord Report.

(6) In addition to the requirements described in subsection (4) of this section, when awarding grants under the program, the office may consider:

(a) The length of time that has elapsed since an application for a grant was received.

(b) Any potential efficiencies gained through coordinating grant-funded activities with other activities at a proposed project site.

(7) The office shall annually publish, and make publicly available on a website of the State Forestry Department, a report for the previous calendar year that addresses:

(a) Each funded project that was completed during the calendar year.

(b) The costs of each completed project and the mileage of streams improved as a result of the completed project.

(8) The department shall submit a copy of the report to an appropriate committee or interim committee of the Legislative Assembly, in the manner described in ORS 192.245, no later than September 15 of each year.

SECTION 18. (1) The Small Forestland Investment in Stream Habitat Program Fund is established, separate and distinct from the General Fund. Interest earned by the Small Forestland Investment in Stream Habitat Program Fund shall be credited to the fund.

(2) Moneys in the fund are continuously appropriated to the State Forestry Department to be distributed by the Small Forestland Owner Assistance Office described in section 19 of this 2022 Act as grants to small forestland owners under the Small Forestland Investment in Stream Habitat Program established under section 17 of this 2022 Act.

(3) The fund shall consist of:

(a) Moneys appropriated to the department for deposit in the fund or otherwise transferred to the fund.

(b) Any gifts, grants, contributions or other donations for use as described in subsection (2) of this section that are received by the department from any public or private source and caused to be deposited in the fund or otherwise transferred to the fund.

SECTION 19. (1) The Small Forestland Owner Assistance Office is created within the State Forestry Department.

(2) The office shall:

(a) Support and promote implementation of financial incentives and technical assistance programs for small forestland owners that align with the intent of the Private Forest Accord Report dated February 2, 2022, and published by the department on February 7, 2022.

(b) Carry out duties related to the Small Forestland Investment in Stream Habitat Program, as described in section 17 of this 2022 Act.

(c) To support compliance with a habitat conservation plan that is consistent with the requirements of the Private Forest Accord Report, develop and maintain a database of:

(A) Landowners that the department has determined meet the requirements set forth in section 16 (3) of this 2022 Act.

(B) Forestland in this state that is owned by the landowners.

(C) The types and conditions of the forestland.

(D) The roads and streams located within the forestland.

(d) Serve as the lead coordination and support body within the department for programs, partnerships and educational opportunities not otherwise described in this section that support forestland owners that own or hold common ownership interest in less than 5,000 acres of forestland in this state.

(e) Identify and implement opportunities to leverage the programs, partnerships and educational opportunities to support activities consistent with the habitat conservation plan, including activities that provide for adequate fish passage, remove fish passage barriers, maintain roads or collect data related to the habitat conservation plan.

(f) Engage in any other duties delegated to the office by the State Board of Forestry or the department.

(3) The board may adopt rules as necessary to implement this section.

SECTION 20. The State Board of Forestry shall adopt the rules described in sections 16, 17 and 19 of this 2022 Act as part of the rule package described in section 2 of this 2022 Act.

BEAVER (CASTOR CANADENSIS) CONSERVATION

SECTION 21. Sections 22, 23 and 25 of this 2022 Act are added to and made a part of ORS chapter 498.

SECTION 22. (1) As used in this section:

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

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

(2) A person that takes a beaver on privately owned forestland shall report the taking to the State Department of Fish and Wildlife, including the reason for the taking, the location of the taking and the number of beavers taken.

(3) The department shall:

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

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

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

SECTION 23. (1) As used in this section:

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

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

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

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

(2) Notwithstanding ORS 498.012 (1), an owner of forestland, other than small forestland, or a designee of the owner, may take a beaver on the owner’s forestland only if:

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

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

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

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

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

(5) An owner, or a designee of an owner, that takes a beaver under subsection (2) or (4) of this section must report the taking as described in section 22 of this 2022 Act.

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

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

(b) Develop a program for voluntarily relocating beavers.

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

SECTION 24. The State Fish and Wildlife Commission shall adopt the rules required by sections 22 and 23 of this 2022 Act on or before November 30, 2022.

SECTION 25. (1) As used in this section:

(a) "Forestland" has the meaning given that term in ORS 527.620.

(b) "Small forestland" has the meaning given that term in section 23 of this 2022 Act.

(2) A person may not solicit or accept a fee for trapping a beaver on privately owned forestland other than small forestland, unless the trapping occurs pursuant to section 23 (2) or (4) of this 2022 Act.

(3) A person that traps a beaver on privately owned forestland other than small forestland may not sell or exchange the pelt of the beaver, unless the trapping occurs pursuant to section 23 (2) or (4) of this 2022 Act.

SECTION 26. ORS 610.060 is amended to read:

610.060. Except as provided in section 23 of this 2022 Act, nothing in the wildlife laws is intended to deny the right of any person to control predatory animals as provided in ORS 610.105.

SECTION 27. ORS 610.105 is amended to read:

610.105. Except as provided in section 23 of this 2022 Act, any person owning, leasing, occupying, possessing or having charge of or dominion over any land, place, building, structure, wharf, pier or dock which is infested with ground squirrels and other noxious rodents or predatory animals, as soon as their presence comes to the knowledge of the person, may, or the agent of the person may, proceed immediately and continue in good faith to control them by poisoning, trapping or other appropriate and effective means.

MITIGATING EFFECTS ON AQUATIC WILDLIFE

SECTION 28. ORS 496.252 is amended to read:

496.252. (1) The Oregon Conservation and Recreation Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Oregon Conservation and Recreation Fund shall be credited to the fund.

(2) Moneys in the fund are continuously appropriated to the State Department of Fish and Wildlife to carry out activities that serve to protect, maintain or enhance fish and wildlife resources in Oregon. The activities for which the department may expend fund moneys include, but are not limited to:

(a) Promoting the health of Oregon's ecosystems and fish and wildlife species by implementing conservation programs and strategies identified in the Oregon Conservation Strategy, as defined in ORS 541.890, including conservation programs and strategies for the nearshore identified in the marine component of the Oregon Conservation Strategy;

(b) Improving engagement of the public in hunting and fishing opportunities and in other outdoor recreation opportunities related to and in support of healthy fish, wildlife and habitats;

(c) Improving educational outreach and engagement of the public, including diverse and underserved communities, related to and in support of healthy fish, wildlife and habitats;

(d) Engaging in, and providing funding for, joint projects of the department and the State Parks and Recreation Department or other state agencies as recommended by the Oregon Conservation and Recreation Advisory Committee established under ORS 496.254; and

(e) Other conservation, management, research, habitat improvement, enforcement, outdoor recreation or education activities.

(3) The fund shall consist of:

(a) Moneys appropriated to the State Department of Fish and Wildlife for deposit in the fund or otherwise transferred to the fund; *[and]*

(b) Gifts, grants, contributions or other donations for use as described in subsection (2) of this section, that are received by the department from any public or private source and caused to be deposited and credited to the fund[.]; **and**

(c) **Moneys in the subaccount described in subsection (4) of this section.**

(4) The Private Forest Accord Mitigation Subaccount is established in the fund. The subaccount shall consist of moneys appropriated to the department for deposit in the subaccount or otherwise transferred to the subaccount and gifts, grants, contributions or other donations that are received by the department from any public or private source and caused to be deposited and credited to the subaccount. Moneys in the subaccount may be used for:

(a) The purposes described in, and the administration of, section 32 of this 2022 Act.

(b) Conducting outreach to persons that own or operate an artificial obstruction, as defined in ORS 509.580, to further the goal of fish passage.

(c) Conducting outreach to persons that may undertake projects described in section 32 of this 2022 Act.

(5) The department and the Oregon Conservation and Recreation Advisory Committee shall jointly submit a biennial report to the Legislative Assembly as provided in ORS 293.640 regarding the expenditure of moneys deposited in the fund, other than moneys deposited in the Private Forest Accord Mitigation Subaccount, and on the status of various activities funded by the moneys.

(6) The department and the Private Forest Accord Mitigation Advisory Committee shall jointly submit a biennial report to the Legislative Assembly as provided in ORS 293.640 regarding the expenditure of moneys deposited in the Private Forest Accord Mitigation Subaccount and on the status of various activities funded by the moneys.

SECTION 29. ORS 496.254 is amended to read:

496.254. (1) The Oregon Conservation and Recreation Advisory Committee is established as an advisory committee to the State Fish and Wildlife Commission and the State Department of Fish and Wildlife for the purpose of carrying out the duties described in subsection (2) of this section. The commission shall determine the number of members of the committee and the geographical representation by the members. The Governor shall appoint the members of the committee. The Associate Director of Outdoor Recreation, or the associate director's designee, shall serve as a nonvoting, ex officio member.

(2) The committee shall review department policies regarding the use of Oregon Conservation and Recreation Fund moneys, **other than policies regarding the use of Private Forest Accord Mitigation Subaccount moneys**, and make recommendations to the commission and the department regarding the use of fund moneys for implementing and administering department activities.

(3) Members of the committee may not receive compensation for service as members. However, subject to any applicable law regulating travel and other expenses of state officers and employees, a member may be reimbursed for actual and necessary travel and other expenses incurred in the performance of official duties from moneys available to the department for the purpose of reimbursement of committee members.

[(4) The department and the committee jointly shall submit a biennial report to the Legislative Assembly as provided in ORS 293.640 regarding the expenditure of moneys deposited in the Oregon Conservation and Recreation Fund established under ORS 496.252 and on the status of various activities funded by the moneys.]

SECTION 30. (1) The Private Forest Accord Mitigation Advisory Committee is established as an advisory committee to the State Fish and Wildlife Commission and the State Depart-

ment of Fish and Wildlife for the purpose of carrying out the duties described in subsection (11) of this section.

(2) The committee shall consist of up to 12 members, including seven voting members appointed pursuant to subsections (3) and (4) of this section and up to five nonvoting members as provided for in subsection (5) of this section.

(3)(a) The Governor shall appoint the following six voting members:

(A) Three members who represent the timber industry.

(B) Three members who represent nongovernmental organizations that promote conservation of freshwater aquatic habitat.

(b) In appointing members, the Governor shall solicit and consider recommendations from the timber industry and nongovernmental organizations that promote conservation of freshwater aquatic habitat.

(4) The members of the Oregon Conservation and Recreation Advisory Committee shall select and appoint from among themselves one person to serve as a voting member of the Private Forest Accord Mitigation Advisory Committee.

(5) The department shall appoint up to five nonvoting members recommended by:

(a) The State Forestry Department.

(b) The Oregon Watershed Enhancement Board.

(c) The State Department of Fish and Wildlife.

(d) The United States Fish and Wildlife Service.

(e) The National Marine Fisheries Service.

(6)(a) The term of a voting member is four years.

(b) Before the expiration of the term of a voting member, the appropriate appointing authority shall appoint a successor whose term begins on the following January 31.

(c) A voting member may be reappointed but may not serve for more than two full terms.

(d) A voting member appointed by the Governor may be removed only for cause.

(7) In case of a vacancy, the appropriate appointing authority shall make an appointment to become effective immediately for the unexpired portion of the term.

(8) The voting members shall biennially select from among themselves a chairperson and vice chairperson.

(9) The committee shall meet at least four times per year.

(10) A majority of the voting members constitutes a quorum for the transaction of business.

(11) The committee shall:

(a) Review State Department of Fish and Wildlife policies regarding the use of moneys deposited in the Private Forest Accord Mitigation Subaccount of the Oregon Conservation and Recreation Fund and make recommendations to the commission and the department regarding the use of moneys in the subaccount.

(b) Solicit and review grant applications under the Private Forest Accord Grant Program described in section 32 of this 2022 Act and advise the commission and department on how to award grants in a manner that will most effectively mitigate the impacts of forest practices, as defined in ORS 527.620.

(12) In undertaking the duties described in subsection (11) of this section, the committee may solicit and consider recommendations from, and otherwise coordinate with, the Oregon Conservation and Recreation Advisory Committee.

(13) Members of the Private Forest Accord Mitigation Advisory Committee may receive compensation and expenses as described in ORS 292.495.

SECTION 31. (1) Notwithstanding section 30 (3) of this 2022 Act, the voting members first appointed by the Governor to the Private Forest Accord Mitigation Advisory Committee must be representatives of six authors of the Private Forest Accord Report dated February 2, 2022, and published by the State Forestry Department on February 7, 2022.

(2) Notwithstanding section 30 (6)(a) of this 2022 Act, of the voting members first appointed by the Governor:

- (a) Two shall serve for terms ending one year after the date of appointment.
- (b) Two shall serve for terms ending two years after the date of appointment.
- (c) Two shall serve for terms ending three years after the date of appointment.

SECTION 32. (1) As used in this section, “forestland” and “forest practice” have the meanings given those terms in ORS 527.620.

(2) The State Fish and Wildlife Commission shall establish by rule a Private Forest Accord Grant Program for the purpose of funding projects that mitigate impacts of forest practices by:

(a) Removing structures that block the passage of aquatic organisms or repairing the structures to promote the passage of aquatic organisms.

(b) Placing logs or other wood-based material in streams to promote natural stream functions.

(c) Conserving, recruiting or reintroducing beavers to restore aquatic landscapes.

(d) Developing or sustaining healthy riparian corridors or wet meadow complexes to reduce burn intensity during fires and protect streams from excess sediment after a fire.

(e) Applying restoration treatments to densely stocked, single-species stands of trees to hasten the return of riparian function after tree harvesting.

(f) Applying restoration treatments to stands of trees to enhance historic species diversity that benefits riparian function.

(g) Supporting establishment of conservation easements on land other than forestland to protect riparian areas.

(h) Supporting acquisition of an existing water right for conversion to an in-stream water right, as described in ORS 537.348, to improve in-stream flow conditions.

(i) Installing fencing or otherwise excluding grazing in riparian areas or around seeps or springs.

(j) Installing off-stream stockwater systems or hardened watering gaps to reduce the effects of grazing on aquatic organisms.

(k) Undertaking other measures that effectively conserve or restore habitat for aquatic organisms addressed by a habitat conservation plan that is consistent with the Private Forest Accord Report dated February 2, 2022, and published by the State Forestry Department on February 7, 2022.

(3) In administering the program, the commission:

(a) Shall develop criteria for awarding a grant and a process for applying for a grant.

(b) Shall award grants to most effectively mitigate impacts of forest practices, consistent with advice from the Private Forest Accord Mitigation Advisory Committee.

(c) May award a grant to another agency.

(d) May require the recipient of a grant to report to the commission on the use of grant funds.

ADAPTIVE MANAGEMENT

SECTION 33. Sections 34, 36, 38 and 39 of this 2022 Act are added to and made a part of ORS 527.610 to 527.770.

SECTION 34. (1) It is the policy of the State of Oregon that regulation of forest practices for the protection of aquatic species shall, in addition to other statutory requirements, be subject to a process of adaptive management, whereby goals and objectives are validated, and modified if necessary, and forest practice rules are monitored for effectiveness relative to the goals and objectives.

(2) The State Board of Forestry shall establish by rule an adaptive management program to accomplish the policy described in subsection (1) of this section, consistent with the

adaptive management framework set forth in the Private Forest Accord Report dated February 2, 2022, and published by the State Forestry Department on February 7, 2022.

(3) The adaptive management program must:

(a) Ensure effective change as needed to meet resource objectives.

(b) Increase the predictability and stability of the process of changing regulation so landowners, regulators and interested members of the public can understand and anticipate change.

(c) Apply best available science to decision-making.

(d) Effectively meet resource objectives with less operationally expensive prescriptions when feasible.

(4) The State Board of Forestry shall adopt rules prescribing in detail the roles and obligations of the Adaptive Management Program Committee and Independent Research and Science Team, consistent with sections 36 and 38 of this 2022 Act and the provisions of the Private Forest Accord Report.

(5) The board shall consider reports submitted by the committee and team.

SECTION 35. On or before November 30, 2022, the State Board of Forestry shall adopt the rules described in section 34 of this section as part of the rule package described in section 2 of this 2022 Act.

SECTION 36. (1) The Adaptive Management Program Committee is established as an advisory committee to the State Board of Forestry.

(2) The committee shall consist of 10 voting members and up to three nonvoting members.

(3) The board shall select a voting member from among two candidates recommended by each of the following 10 entities:

(a) The Oregon Forest and Industries Council.

(b) The Coalition of Oregon Land Trusts.

(c) The Associated Oregon Loggers.

(d) A conservation organization collectively selected by Beyond Toxics, Cascadia Wildlands, Klamath Siskiyou Wildlands Center, Oregon League of Conservation Voters, Oregon Stream Protection Coalition, Oregon Wild, Portland Audubon and Umpqua Watersheds, which were parties to the Private Forest Accord Report dated February 2, 2022, and published by the State Forestry Department on February 7, 2022.

(e) The Oregon Small Woodlands Association.

(f) The Commission on Indian Services.

(g) A recreational or commercial angling organization collectively selected by Northwest Guides and Anglers Association, Pacific Coast Federation of Fishermen's Associations, Trout Unlimited and Wild Salmon Center, which were parties to the Private Forest Accord Report.

(h) The Association of Oregon Counties.

(i) The State Department of Fish and Wildlife.

(j) The Department of Environmental Quality.

(4) If an entity described in subsection (3) of this section ceases to exist, the board shall determine a successor entity that represents the same interests.

(5) The board shall:

(a) Select one representative of the State Forestry Department to serve as a nonvoting member.

(b) Invite one representative of the National Marine Fisheries Service and one representative of the United States Fish and Wildlife Service to serve on the committee as nonvoting members.

(6) The voting members and the nonvoting member described in subsection (5)(a) of this section shall serve for terms of four years and may serve an unlimited number of terms.

(7) The committee shall:

(a) Guide the adaptive management process.

(b) Set the research agenda of the Independent Research and Science Team established in section 38 of this 2022 Act and recommend to the board the team's budget.

(c) Assess the scientific findings in a report prepared by the team and prepare a report that identifies alternative actions, including no action, to address resource issues identified in the team's report.

(d) Submit the committee's reports to the board.

(e) Assist the board in the ongoing process of identifying and modifying resource objectives.

(f) Review reports related to compliance monitoring and enforcement.

(g) Submit recommendations to the board concerning rule adjustment, guidance or training.

(h) Strive for full consensus in committee decision-making.

(8) Notwithstanding subsection (7)(h) of this section, the committee shall make substantial decisions by a vote of at least seven voting members.

(9) Committee members are not eligible for compensation or reimbursement for expenses. If an organization represented by a committee member requests a participation grant to compensate for the organizational resources the organization dedicated to supporting the committee member's service on the committee, subject to available funding, the board shall award the participation grant in an amount determined by the board.

(10) The board shall adopt rules describing a process for awarding participation grants described in subsection (9) of this section.

SECTION 37. (1) The State Board of Forestry shall appoint the first voting members of the Adaptive Management Program Committee on or before November 30, 2022.

(2) Notwithstanding section 36 (6) of this 2022 Act, of the voting members of the committee first appointed by the board:

(a) Two shall serve for terms ending one year after the date of appointment.

(b) Two shall serve for terms ending two years after the date of appointment.

(c) Three shall serve for terms ending three years after the date of appointment.

(3) The board shall appoint the first voting members of the Independent Research and Science Team from a list of candidates provided by the committee.

SECTION 38. (1) The Independent Research and Science Team is established as an advisory committee to the State Board of Forestry.

(2) The team shall consist of an odd number of at least five voting members. The voting members must:

(a) Have demonstrated subject matter expertise in a relevant field and a graduate-level degree in a relevant natural resources-related field such as forestry, silviculture, ecology, hydrology, wildlife, fisheries or geology.

(b) Include, at all times:

(A) At least one voting member who represents a public institution.

(B) At least one voting member who represents the timber industry.

(C) At least one voting member who represents a nongovernmental organization that promotes conservation of freshwater aquatic habitat.

(4) Team members shall serve for initial terms of four years and may serve an unlimited number of terms.

(5) A team member may be removed by a two-thirds vote of the team or by a majority vote of the board.

(6) If there is a vacancy on the team, or if the team determines that a new scientific or technical discipline must be represented on the team in order for the team to perform its research duties:

(a) The team shall submit a list of candidates to the board.

(b) The board may appoint one or more of the candidates as voting members of the team.

(c) If the board does not select one or more voting members from the list of candidates, the team shall submit a new list of candidates to the board until such time as the board appoints one or more candidates as voting members of the team.

(7) The board shall adopt rules for administering subsection (6) of this section.

(8) The team shall:

(a) Conduct or oversee research requested by the Adaptive Management Program Committee.

(b) Report to the board and the committee on the findings of the research, including findings concerning the magnitude of impacts on species of concern, the urgency of needed action and the degree of scientific confidence or uncertainty behind the findings.

(9)(a) The team shall strive for full consensus in team decision-making.

(b) Notwithstanding paragraph (a) of this subsection, the team shall make substantial decisions by a vote of at least two-thirds of the team members.

(10) Team members are not eligible for compensation or reimbursement for expenses. If an organization represented by a team member requests a participation grant to compensate for the organizational resources the organization dedicated to supporting the team member's service on the team, subject to available funding, the board shall award the participation grant in an amount determined by the board.

(11) The board shall adopt rules describing a process for awarding participation grants described in subsection (10) of this section.

SECTION 39. (1) Subject to subsection (2) of this section, the State Board of Forestry may not adopt, amend or repeal a rule described in ORS 527.714 (1)(c) that relates to aquatic resources until the board has first received and considered reports that pertain to the rule from the Adaptive Management Program Committee and the Independent Research and Science Team described in sections 36 and 38 of this 2022 Act.

(2) Notwithstanding ORS 527.714 (7), subsection (1) of this section does not apply:

(a) To adoption, amendment or repeal of a rule as part of a rulemaking proceeding commenced pursuant to ORS 527.765 (3)(e) in response to a petition for review of best management practices made by the Environmental Quality Commission;

(b) To adoption, amendment or repeal of a rule by the commission;

(c) If the legislation authorizing or requiring the adoption, amendment or repeal of the rule provides a specific exemption from this section; or

(d) If the adoption, amendment or repeal of the rule is necessary to comply with a court order.

(3) The board may solicit and consider a report from the committee or the team prior to or as part of:

(a) A rulemaking proceeding described in subsection (2)(a) of this section, if soliciting and considering the report does not conflict with the requirements of ORS 527.765 (3)(e); or

(b) Any other rulemaking described in ORS 527.714 (1)(c), subject to the funding available to, and the capacity of, the committee and the team, taking into consideration the requirements of subsection (1) of this section.

AMENDMENTS TO OREGON FOREST PRACTICES ACT

SECTION 40. ORS 527.620 is amended to read:

527.620. As used in ORS 527.610 to 527.770, 527.990 and 527.992:

(1) "Aquatic resource" means:

(a) A species addressed in the Private Forest Accord Report dated February 2, 2022, and published by the State Forestry Department on February 7, 2022, and the resources on which the species relies; or

(b) If a habitat conservation plan consistent with the Private Forest Accord Report has been approved, a species addressed in the habitat conservation plan and the resources on which the species relies.

[(1)] (2) "Board" means the State Board of Forestry.

[(2)] (3) "Cumulative effects" means the impact on the environment which results from the incremental impact of the forest practice when added to other past, present and reasonably foreseeable future forest practices regardless of what governmental agency or person undertakes such other actions.

[(3)] (4) "DBH" means the diameter at breast height which is measured as the width of a standing tree at four and one-half feet above the ground, on the uphill side.

[(4)] (5) "Edge of the roadway" means:

(a) For interstate highways, the fence.

(b) For all other state highways, the outermost edge of pavement, or if unpaved, the edge of the shoulder.

[(5)] (6) "Forest practice" means any operation conducted on or pertaining to forestland, including but not limited to:

(a) Reforestation of forestland;

(b) Road construction and maintenance;

(c) Harvesting of forest tree species;

(d) Application of chemicals;

(e) Disposal of slash; and

(f) Removal of woody biomass.

[(6)] (7) "Forest tree species" means any tree species capable of producing logs, fiber or other wood materials suitable for the production of lumber, sheeting, pulp, firewood or other commercial forest products except trees grown to be Christmas trees as defined in ORS 571.505 on land used solely for the production of Christmas trees.

[(7)] (8) "Forestland" means land that is used for the growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.

[(8)] (9) "Harvest type 1" means an operation that requires reforestation but does not require wildlife leave trees. A harvest type 1 is an operation that leaves a combined stocking level of free to grow seedlings, saplings, poles and larger trees that is less than the stocking level established by rule of the board that represents adequate utilization of the productivity of the site.

[(9)] (10) "Harvest type 2" means an operation that requires wildlife leave trees but does not require reforestation. A harvest type 2 does not require reforestation because it has an adequate combined stocking of free to grow seedlings, saplings, poles and larger trees, but leaves:

(a) On Cubic Foot Site Class I, II or III, fewer than 50 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre;

(b) On Cubic Foot Site Class IV or V, fewer than 30 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre; or

(c) On Cubic Foot Site Class VI, fewer than 15 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre.

[(10)] (11) "Harvest type 3" means an operation that requires reforestation and requires wildlife leave trees. This represents a level of stocking below which the size of operations is limited under ORS 527.740 and 527.750.

[(11)] (12) "Landowner" means any individual, combination of individuals, partnership, corporation or association of whatever nature that holds an ownership interest in forestland, including the state and any political subdivision thereof.

[(12)] (13) "Operation" means any commercial activity relating to the establishment, management or harvest of forest tree species except as provided by the following:

(a) The establishment, management or harvest of Christmas trees, as defined in ORS 571.505, on land used solely for the production of Christmas trees.

(b) The establishment, management or harvest of hardwood timber, including but not limited to hybrid cottonwood, that is:

(A) Grown on land that has been prepared by intensive cultivation methods and that is cleared of competing vegetation for at least three years after tree planting;

(B) Of a species marketable as fiber for inclusion in the furnish for manufacturing paper products;

(C) Harvested on a rotation cycle that is 12 or fewer years after planting; and

(D) Subject to intensive agricultural practices such as fertilization, cultivation, irrigation, insect control and disease control.

(c) The establishment, management or harvest of trees actively farmed or cultured for the production of agricultural tree crops, including nuts, fruits, seeds and nursery stock.

(d) The establishment, management or harvest of ornamental, street or park trees within an urbanized area, as that term is defined in ORS 221.010.

(e) The management or harvest of juniper species conducted in a unit of less than 120 contiguous acres within a single ownership.

(f) The establishment or management of trees intended to mitigate the effects of agricultural practices on the environment or fish and wildlife resources, such as trees that are established or managed for windbreaks, riparian filters or shade strips immediately adjacent to actively farmed lands.

(g) The development of an approved land use change after timber harvest activities have been completed and land use conversion activities have commenced.

[(13)] (14) "Operator" means any person, including a landowner or timber owner, who conducts an operation.

(15)(a) "Significant violation" means:

(A) **Violation of ORS 527.670 (6) by engaging in an operation without filing the requisite notification;**

(B) **Continued operation in contravention of an order issued by the State Forester under ORS 527.680 (2)(a), (3) or (5); or**

(C) **A violation resulting in major damage to a resource described in ORS 527.710 (2) for which restoration is expected to take more than 10 years.**

(b) "Significant violation" does not include:

(A) **Unintentional operation in an area outside an operating area of an operation for which sufficient notification was filed pursuant to ORS 527.670 (6);**

(B) **Continued operation in contravention of an order issued by the State Forester under ORS 527.680 (2)(a), (3) or (5), where an operator, timber owner or landowner demonstrates that it did not receive the order; or**

(C) **Failure to timely notify the State Forester of an intent to continue an operation into the next calendar year.**

[(14)] (16) "Single ownership" means ownership by an individual, partnership, corporation, limited liability company, trust, holding company or other business entity, including the state or any political subdivision thereof. Single ownership includes ownership held under different names or titles where the same individual or individuals, or their heirs or assigns, are shareholders (other than those of public corporations whose stock is traded on the open market), partners, business trustees or officers, or otherwise have an interest in or are associated with each property.

[(15)] (17) "State Forester" means the State Forester or the duly authorized representative of the State Forester.

[(16)] (18) "Suitable hardwood seedlings" means any hardwood seedling that will eventually yield logs or fiber, or both, sufficient in size and quality for the production of lumber, plywood, pulp or other forest products.

[(17)] (19) "Timber owner" means any individual, combination of individuals, partnership, corporation or association of whatever nature, other than a landowner, that holds an ownership interest in any forest tree species on forestland.

[(18)] **(20)** “Visually sensitive corridor” means forestland extending outward 150 feet, measured on the slope, from the outermost edge of the roadway of a scenic highway referred to in ORS 527.755, along both sides for the full length of the highway.

[(19)] **(21)** “Wildlife leave trees” means trees or snags required to be retained as described in ORS 527.676 (1).

[(20)] **(22)** “Written plan” means a document prepared by an operator, timber owner or landowner that describes how the operation is planned to be conducted.

SECTION 41. ORS 527.630 is amended to read:

527.630. (1) Forests make a vital contribution to Oregon by providing jobs, products, tax base and other social and economic benefits, by helping to maintain forest tree species, soil, air and water resources and by providing a habitat for wildlife and aquatic life. Therefore, it is declared to be the public policy of the State of Oregon to encourage economically efficient forest practices that ensure the continuous growing and harvesting of forest tree species and the maintenance of forestland for such purposes as the leading use on privately owned land, consistent with sound management of soil, air, water, fish and wildlife resources and scenic resources within visually sensitive corridors as provided in ORS 527.755 and to ensure the continuous benefits of those resources for future generations of Oregonians.

(2) It is recognized that operations on forestland are already subject to other laws and to regulations of other agencies which deal primarily with consequences of such operations rather than the manner in which operations are conducted. It is further recognized that it is essential to avoid uncertainty and confusion in enforcement and implementation of such laws and regulations and in planning and carrying out operations on forestlands.

(3) To encourage forest practices implementing the policy of ORS 527.610 to 527.770, [and] 527.990 and 527.992, it is declared to be in the public interest to vest in the State Board of Forestry exclusive authority to develop and enforce statewide and regional rules pursuant to ORS 527.710 and to coordinate with other state agencies and local governments which are concerned with the forest environment.

(4) It is recognized that ensuring compliance with, and enforcing, ORS 527.610 to 527.770 and rules and orders adopted or issued thereunder is essential to protect Oregon’s natural resources. It is further recognized that onsite inspections are necessary to further the policy of ORS 527.610 to 527.770, 527.990 and 527.992.

(5) It is recognized that enforcement of the policy of ORS 527.610 to 527.770, 527.990 and 527.992 is necessary to support the integrity of the policy and give the public confidence that standards for forest practices are being followed. It is further recognized that an effective enforcement program must include:

(a) Adequate training and education of enforcement officers, operators, timber owners and landowners.

(b) Clear technical guidance.

(c) Implementation expectations that are transparent and easily understood by operators, timber owners and landowners.

(6) It is declared to be the policy of the State of Oregon that the program for implementing enforcement under ORS 527.680, 527.683, 527.685, 527.690 and 527.700 be adequately funded, and that the board:

(a) Use inspections and enforcement as tools to deter future violations and to educate and train operators, timber owners and landowners.

(b) In exercising enforcement discretion, including discretion to impose penalties, prioritize addressing significant violations, other consequential violations and the actions of repeat violators.

[(4)] **(7)** The board may adopt and enforce rules addressing scenic considerations only in accordance with ORS 527.755.

[(5)] (8) The board shall adopt and enforce forest practice rules to reduce the risk of serious bodily injury or death from a rapidly moving landslide only in accordance with ORS 527.710 (10). As used in this subsection, “rapidly moving landslide” has the meaning given in ORS 195.250.

[(6)] (9) The State of Oregon should provide a stable regulatory environment to encourage investment in private forestlands.

SECTION 42. Sections 43 and 44 of this 2022 Act are added to and made a part of ORS 527.610 to 527.770.

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

(2) The inspection may occur:

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

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

(3) The person conducting the inspection shall:

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

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

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

(5) The court may issue a warrant if:

(a) The State Forester or a representative of the State Forester has attempted inspection consistent with subsections (1) to (3) of this section and access to all or part of the forestland was actually or constructively denied; or

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

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

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

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

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

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

(3) Rules described in subsection (2)(b) or (c) of this section must limit the discretion of the person conducting the compliance monitoring.

SECTION 45. ORS 527.680 is amended to read:

527.680. (1) Whenever the State Forester determines that an operator has committed a violation under ORS 527.990 (1), the State Forester may issue and serve a citation upon the operator or authorized representative. The State Forester shall cause a copy of the citation to be mailed or delivered to the timber owner and landowner. Whenever the State Forester determines that the landowner has failed to comply with the reforestation rules under ORS 527.710, the State Forester may issue and serve a citation upon the landowner or authorized representative. Each citation is-

sued under this section shall specify the nature of the violation charged and any damage or unsatisfactory condition that has occurred as the result of such violation.

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

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

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

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

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

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

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

SECTION 46. ORS 527.685 is amended to read:

527.685. (1) The State Board of Forestry shall by rule establish the amount of civil penalty that may be imposed for a particular violation. Except as provided in [subsection (5)] **subsections (5) and (6)** of this section, [no] a civil penalty [shall] **may not** exceed [\$5,000] **\$10,000** per violation.

(2) In imposing a penalty authorized by this section, the State Forester may consider the following factors:

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

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

(c) The gravity and magnitude of the violation.

(d) Whether the violation was repeated or continuous.

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

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

(g) Any relevant rule of the board.

(h) The [violator's] cooperativeness **of the person incurring the penalty and the person's efforts, if any,** to correct the violation.

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

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

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

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

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

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

SECTION 47. ORS 527.714 is amended to read:

527.714. (1) The rulemaking authority of the State Board of Forestry under ORS 527.610 to 527.770 consists generally of the following three types of rules:

(a) Rules adopted to implement administration, procedures or enforcement of ORS 527.610 to 527.770 that support but do not directly regulate standards of forest practices.

(b) Rules adopted to provide definitions or procedures for forest practices where the standards are set in statute.

(c) Rules adopted to implement the provisions of ORS 527.710 (2), (3), (6), (8), (9) and (10) that grant broad discretion to the board and that set standards for forest practices not specifically addressed in statute.

(2) When considering the adoption of a rule, and prior to the notice required pursuant to ORS 183.335, the board shall determine which type of rule described in subsection (1) of this section is being considered.

(3) If the board determines that a proposed rule is of the type described in subsection (1)(a) or (b) of this section, or if the proposed rule is designed only to clarify the meaning of rules already adopted or to make minor adjustments to rules already adopted that are of the type described in subsection (1)(c) of this section, rulemaking may proceed in accordance with ORS 183.325 to 183.410 and is not subject to the provisions of this section.

(4) If the board determines that a proposed rule is of the type described in subsection (1)(c) of this section, and the proposed rule would change the standards for forest practices, the board shall describe in its rule the purpose of the rule and the level of protection that is desired. **If the proposed rule would change the standards for forest practices that relate to the protection of aquatic resources, the level of protection that is desired must be consistent with:**

(a) Requirements described in the Private Forest Accord Report dated February 2, 2022, and published by the State Forestry Department on February 7, 2022; or

(b) If a habitat conservation plan consistent with the Private Forest Accord Report has been approved, the terms of the habitat conservation plan.

(5) If the board determines that a proposed rule is of the type described in subsection (1)(c) of this section, including a proposed amendment to an existing rule not qualifying under subsection (3) of this section, and the proposed rule would provide new or increased standards for forest practices, the board may adopt such a rule only after determining that the following facts exist and standards are met:

(a)(A) If forest practices continue to be conducted under existing regulations[,]:

(i) There is monitoring or research evidence that documents that degradation of resources maintained under ORS 527.710 (2) or (3) is likely[,]; or

(ii) In the case of rules proposed under ORS 527.710 (10), that there is a substantial risk of serious bodily injury or death; or

(B) The board has received reports produced by the Adaptive Management Program Committee and the Independent Research and Science Team described in sections 36 and 38 of this 2022 Act that review the new or increased standards the proposed rule would provide;

(b) If the resource to be protected is a wildlife species, the scientific or biological status of a species or resource site to be protected by the proposed rule has been documented using best available information;

(c) The proposed rule reflects available scientific information[,] **and, as appropriate,** the results of relevant monitoring and[, *as appropriate,*] adequate field evaluation at representative locations in Oregon;

(d) The objectives of the proposed rule are clearly defined, and the restrictions placed on forest practices as a result of adoption of the proposed rule:

(A)(i) Are to prevent harm or provide benefits to the resource or resource site for which protection is sought[,]; or

(ii) In the case of rules proposed under ORS 527.710 (10), **are** to reduce risk of serious bodily injury or death; and

(B) Are directly related to the objective of the proposed rule and [*substantially*] **materially** advance its purpose; **and**

(e) The availability, effectiveness and feasibility of alternatives to the proposed rule, including nonregulatory alternatives, were considered, and the alternative chosen is the least burdensome to landowners and timber owners, in the aggregate, while still achieving the desired level of protection[; and].

[(f) The benefits to the resource, or in the case of rules proposed under ORS 527.710 (10), the benefits in reduction of risk of serious bodily injury or death, that would be achieved by adopting the rule are in proportion to the degree that existing practices of the landowners and timber owners, in the aggregate, are contributing to the overall resource concern that the proposed rule is intended to address.]

(6) Nothing in subsection (5) of this section:

(a) Requires the board to call witnesses;

(b) Requires the board to allow cross-examination of witnesses;

(c) Restricts ex parte communications with the board or requires the board to place statements of such communications on the record;

(d) Requires verbatim transcripts of records of proceedings; or

(e) Requires depositions, discovery or subpoenas.

(7) If the board determines that a proposed rule is of the type described in subsection (1)(c) of this section, including a proposed amendment to an existing rule not qualifying under subsection (3) of this section, and that the proposed rule relates to aquatic resources, the board may adopt the rule only after considering reports from the Adaptive Management Program Committee and the Independent Research and Science Team.

[(7)] **(8)** If the board determines that a proposed rule is of the type described in subsection (1)(c) of this section, and the proposed rule would require new or increased standards for forest practices, as part of or in addition to the economic and fiscal impact statement required by ORS 183.335 (2)(b)(E), the board shall, prior to the close of the public comment period, prepare and make avail-

able to the public a comprehensive analysis of the economic impact of the proposed rule. The analysis shall include, but is not limited to:

- (a) An estimate of the potential change in timber harvest as a result of the rule;
- (b) An estimate of the overall statewide economic impact, including a change in output, employment and income[;] **related to:**

- (A) **The forest products industry;**

- (B) **Other private sectors such as commercial fishing, recreational fishing and other outdoor recreation; and**

- (C) **Government sectors such as public water system providers, waste treatment and built and natural infrastructure;**

- (c) An estimate of the total economic impact on the forest products industry and common school and county forest trust land revenues, both regionally and statewide; and

- (d) [*Information derived from consultation with potentially affected landowners and timber owners and*] An assessment of the economic impact of the proposed rule [*under a wide variety of circumstances, including varying ownership sizes and the geographic location and terrain of a diverse subset of potentially affected forestland parcels*] **on various types of affected forestland parcels and on various geographic locations that is derived from consulting stakeholders.**

[8)] (9) The provisions of this section do not apply to temporary rules adopted by the board.

SECTION 48. ORS 527.990 is amended to read:

527.990. (1) Subject to ORS 153.022, violation of ORS 527.670, 527.672, 527.676, 527.740, 527.750, [or] 527.755, **527.788 or 527.797**, or any rule promulgated under ORS 527.710 **or section 2 or 44 of this 2022 Act**, is a Class A misdemeanor. Each day of operation in violation of an order issued under ORS 527.680 (3) shall be deemed to be a separate offense.

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

SECTION 49. ORS 527.992 is amended to read:

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

- (a) The requirements of ORS 527.670, 527.672, 527.676, 527.740, 527.750, [or] 527.755, **527.788 or 527.797**.

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

- (c) Any rule or standard of the State Board of Forestry adopted or issued pursuant to ORS 527.710 **or section 2 or 44 of this 2022 Act**.

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

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

EFFECT OF POLICIES ON INDIAN TRIBES

SECTION 50. (1) **Nothing in sections 1 to 8, 10 to 25, 30 to 39, 42 to 44, 51 and 52 of this 2022 Act and the amendments to ORS 195.308, 496.252, 496.254, 527.620, 527.630, 527.680, 527.685, 527.714, 527.990, 527.992, 610.060 and 610.105 by sections 9, 26 to 29, 40, 41 and 45 to 49 of this 2022 Act:**

- (a) **Affects the treaty or other rights of a federally recognized Indian tribe in Oregon.**

- (b) **Applies to real property that is:**

- (A) **Held in trust by the United States for the benefit of a federally recognized Indian tribe in Oregon or a member of a federally recognized Indian tribe in Oregon;**

- (B) **Owned by a federally recognized Indian tribe in Oregon; or**

- (C) **Owned by an entity that is wholly owned by:**

- (i) A federally recognized Indian tribe in Oregon; or
- (ii) A tribally owned or operated corporation organized pursuant to the Indian Reorganization Act (25 U.S.C. 5101 to 5144).

(2) The State Board of Forestry shall develop a process for a federally recognized Indian tribe in Oregon to elect to join as an applicant for a habitat conservation plan described in section 11 of this 2022 Act, consistent with the terms and requirements applicable to private forestland under the Private Forest Accord Report dated February 2, 2022, and published by the State Forestry Department on February 7, 2022.

RULEMAKING CONCERNING PESTICIDE APPLICATIONS

SECTION 51. The State Forestry Department may adopt rules to implement the provisions of ORS 527.786 to 527.793, 527.794, 527.795, 527.796, 527.797 and 527.798.

REPORTS TO LEGISLATIVE ASSEMBLY

SECTION 52. The State Board of Forestry shall report annually to a committee or interim committee of the Legislative Assembly related to forestry, in the manner described in ORS 192.245, on progress in implementing the requirements of the Private Forest Accord Report dated February 2, 2022, and published by the State Forestry Department on February 7, 2022.

NOTE: Section 53 was deleted by amendment. Subsequent sections were not renumbered.

CONTINGENT OPERATIVE DATES

SECTION 54. (1) The Legislative Assembly intends that the policies described in sections 1 to 8, 10 to 25, 30 to 39, 42 to 44 and 50 to 52 of this 2022 Act and the amendments to ORS 195.308, 496.252, 496.254, 527.620, 527.630, 527.680, 527.685, 527.714, 527.990, 527.992, 610.060 and 610.105 by sections 9, 26 to 29, 40, 41 and 45 to 49 of this 2022 Act shall remain in effect only if:

(a) An incidental take permit related to an approved habitat conservation plan consistent with the Private Forest Accord Report dated February 2, 2022, and published by the State Forestry Department on February 7, 2022, is issued on or before December 31, 2027;

(b) The State Board of Forestry has not made a finding that the habitat conservation plan imposes more than a de minimis difference in economic or resource impacts, at the level of landscapes, relative to rules adopted or amended as part of the rule package described in section 2 of this 2022 Act; and

(c) The incidental take permit remains in effect.

(2) The legislative intent described in subsection (1) of this section is established by sections 55 to 64 of this 2022 Act.

SECTION 55. (1) If an incidental take permit related to an approved habitat conservation plan responsive to the Private Forest Accord Report dated February 2, 2022, and published by the State Forestry Department on February 7, 2022, is issued on or before December 31, 2027, an author of the Private Forest Accord Report may, no later than 14 days after the date the incidental take permit is issued, petition the State Board of Forestry to make a finding as to whether the habitat conservation plan imposes more than a de minimis difference in economic or resource impacts, at the level of landscapes, relative to rules adopted or amended as part of the rule package described in section 2 of this 2022 Act.

(2) If the board receives a petition described in subsection (1) of this section, the board shall issue a finding no later than 45 days after the date the petition is received.

(3) If the board finds that the habitat conservation plan imposes more than a de minimis difference:

(a) On or before the 91st day after the date the board makes the finding, the board shall:
(A) Repeal new rules adopted as part of the rule package described in section 2 of this 2022 Act.

(B) Amend rules in effect on or before the effective date of this 2022 Act as needed to conform with repeals described in subparagraph (A) of this paragraph.

(C) Amend any other rules as needed to conform with repeals described in subparagraph (A) of this paragraph.

(b) On or before the 120th day after the board makes the finding, the State Fish and Wildlife Commission shall amend rules as needed to conform the rules with actions taken by the board under paragraph (a) of this subsection.

SECTION 56. If, pursuant to section 55 (1) and (2) of this 2022 Act, the State Board of Forestry does not make a finding or finds that the habitat conservation plan described in section 55 (1) of this 2022 Act does not impose more than a de minimis difference, as described in section 55 (1) of this 2022 Act, and the incidental take permit described in section 55 (1) of this 2022 Act is subsequently revoked or invalidated:

(1) On or before the 180th day after the date that any appeals process related to the revocation or invalidation has been exhausted or foregone, whichever occurs first, the board shall:

(a) Repeal new rules adopted as part of the rule package described in section 2 of this 2022 Act.

(b) Amend rules in effect on or before the effective date of this 2022 Act as needed to conform with repeals described in paragraph (a) of this paragraph.

(c) Amend any other rules as needed to conform with repeals described in paragraph (a) of this paragraph.

(2) On or before the 210th day after the date that any appeals process related to the revocation or invalidation has been exhausted or foregone, whichever occurs first, the State Fish and Wildlife Commission shall amend rules as needed to conform the rules with actions taken by the board under subsection (1) of this section.

SECTION 57. If an incidental take permit related to an approved habitat conservation plan consistent with the Private Forest Accord Report dated February 2, 2022, and published by the State Forestry Department on February 7, 2022, is not issued on or before December 31, 2027:

(1) On or before April 1, 2028, the State Board of Forestry shall:

(a) Repeal new rules adopted as part of the rule package described in section 2 of this 2022 Act.

(b) Amend rules in effect on or before the effective date of this 2022 Act as needed to conform with repeals described in paragraph (a) of this subsection.

(c) Amend any other rules as needed to conform with repeals described in paragraph (a) of this subsection.

(2) On or before May 1, 2028, the State Fish and Wildlife Commission shall amend rules as needed to conform the rules with actions taken by the board under subsection (1) of this section.

SECTION 58. On or before February 1, 2028, the State Board of Forestry shall report to a committee or interim committee of the Legislative Assembly related to forestry, in the manner described in ORS 192.245, on:

(1) Whether the incidental take permit described in section 11 of this 2022 Act was issued on or before December 31, 2027.

(2) Whether the board has received a petition to make a finding described in section 55 (1) and (2) of this 2022 Act.

SECTION 59. If an incidental take permit related to an approved habitat conservation plan consistent with the Private Forest Accord Report dated February 2, 2022, and published by the State Forestry Department on February 7, 2022, is issued on or before December 31,

2027, but is subsequently revoked or invalidated, after the date that any appeals process related to the revocation or invalidation has been exhausted or forgone, whichever occurs first, the State Board of Forestry shall:

(1) Promptly report the revocation or invalidation to a committee or interim committee of the Legislative Assembly related to forestry, in the manner described in ORS 192.245.

(2) Notify the Office of the Legislative Counsel of the revocation or invalidation as soon as practicable.

SECTION 60. Sections 1 to 8, 10 to 25, 30 to 39, 42 to 44 and 50 to 52 of this 2022 Act are repealed.

SECTION 61. (1) Except as otherwise provided in sections 62 and 63 of this 2022 Act, the repeal of sections 1 to 8, 10 to 25, 30 to 39, 42 to 44 and 50 to 52 of this 2022 Act by section 60 of this 2022 Act and the amendments to ORS 195.308, 496.252, 496.254, 527.620, 527.630, 527.680, 527.685, 527.714, 527.990, 527.992, 610.060 and 610.105 by sections 65 to 76 of this 2022 Act become operative only if the State Board of Forestry finds, pursuant to section 55 (1) and (2) of this 2022 Act, that the habitat conservation plan described in section 55 (1) of this 2022 Act imposes more than a de minimis difference, as described in section 55 (1) of this 2022 Act.

(2) If the board finds, pursuant to section 55 (1) and (2) of this 2022 Act, that the habitat conservation plan described in section 55 (1) of this 2022 Act imposes more than a de minimis difference, as described in section 55 (1) of this 2022 Act, the repeal of sections 1 to 8, 10 to 25, 30 to 39, 42 to 44 and 50 to 52 of this 2022 Act by section 60 of this 2022 Act and the amendments to ORS 195.308, 496.252, 496.254, 527.620, 527.630, 527.680, 527.685, 527.714, 527.990, 527.992, 610.060 and 610.105 by sections 65 to 76 of this 2022 Act become operative on the 150th day after the date the board makes the finding.

SECTION 62. (1) Except as otherwise provided in sections 61 and 63 of this 2022 Act, the repeal of sections 1 to 8, 10 to 25, 30 to 39, 42 to 44 and 50 to 52 of this 2022 Act by section 60 of this 2022 Act and the amendments to ORS 195.308, 496.252, 496.254, 527.620, 527.630, 527.680, 527.685, 527.714, 527.990, 527.992, 610.060 and 610.105 by sections 65 to 76 of this 2022 Act become operative only if:

(a) Pursuant to section 55 (1) and (2) of this 2022 Act, the State Board of Forestry does not make a finding or finds that the habitat conservation plan described in section 55 (1) of this 2022 Act does not impose more than a de minimis difference, as described in section 55 (1) of this 2022 Act; and

(b) The incidental take permit is subsequently revoked or invalidated.

(2) If the events described in subsection (1)(a) and (b) of this section occur, the repeal of sections 1 to 8, 10 to 25, 30 to 39, 42 to 44 and 50 to 52 of this 2022 Act by section 60 of this 2022 Act and the amendments to ORS 195.308, 496.252, 496.254, 527.620, 527.630, 527.680, 527.685, 527.714, 527.990, 527.992, 610.060 and 610.105 by sections 65 to 76 of this 2022 Act become operative on the 240th day after the date that any appeals process related to the revocation or invalidation has been exhausted or foregone, whichever occurs first.

SECTION 63. (1) Except as otherwise provided in sections 61 and 62 of this 2022 Act, the repeal of sections 1 to 8, 10 to 25, 30 to 39, 42 to 44 and 50 to 52 of this 2022 Act by section 60 of this 2022 Act and the amendments to ORS 195.308, 496.252, 496.254, 527.620, 527.630, 527.680, 527.685, 527.714, 527.990, 527.992, 610.060 and 610.105 by sections 65 to 76 of this 2022 Act become operative only if an incidental take permit related to an approved habitat conservation plan consistent with the Private Forest Accord Report dated February 2, 2022, and published by the State Forestry Department on February 7, 2022, is not issued on or before December 31, 2027.

(2) If an incidental take permit related to an approved habitat conservation plan consistent with the Private Forest Accord Report is not issued on or before December 31, 2027, the repeal of sections 1 to 8, 10 to 25, 30 to 39, 42 to 44 and 50 to 52 of this 2022 Act by section 60 of this 2022 Act and the amendments to ORS 195.308, 496.252, 496.254, 527.620, 527.630,

527.680, 527.685, 527.714, 527.990, 527.992, 610.060 and 610.105 by sections 65 to 76 of this 2022 Act become operative on June 1, 2028.

SECTION 64. Sections 59 and 62 of this 2022 Act are repealed on January 2, 2077.

CONTINGENT AMENDMENTS

SECTION 65. ORS 195.308, as amended by section 9 of this 2022 Act, is amended to read:

195.308. Notwithstanding the requirement to pay just compensation for certain land use regulations under ORS 195.305 (1), compensation is not due for[.]

[(1)] the enforcement or enactment of a land use regulation established in ORS 30.930 to 30.947, 527.310 to 527.370, 561.995, 569.360 to 569.495, 570.010 to 570.050, 570.105 to 570.190, 570.305, 570.310, 570.320 to 570.360, 570.405, 570.412, 570.420, 570.425, 570.450, 570.700 to 570.710, 570.755, 570.770, 570.775, 570.780, 570.790, 570.800, 570.995, 596.095, 596.100, 596.105, 596.393, 596.990 or 596.995 or in administrative rules or statewide plans implementing these statutes.

[(2)] *The enforcement, adoption or amendment of a rule adopted or amended by the State Board of Forestry:*

[(a)] As part of the rule package described in section 2 of this 2022 Act.]

[(b)] After the board has considered reports that pertain to the rule from the Adaptive Management Program Committee and the Independent Research and Science Team described in sections 36 and 38 of this 2022 Act.]

SECTION 66. ORS 496.252, as amended by section 28 of this 2022 Act, is amended to read:

496.252. (1) The Oregon Conservation and Recreation Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Oregon Conservation and Recreation Fund shall be credited to the fund.

(2) Moneys in the fund are continuously appropriated to the State Department of Fish and Wildlife to carry out activities that serve to protect, maintain or enhance fish and wildlife resources in Oregon. The activities for which the department may expend fund moneys include, but are not limited to:

(a) Promoting the health of Oregon's ecosystems and fish and wildlife species by implementing conservation programs and strategies identified in the Oregon Conservation Strategy, as defined in ORS 541.890, including conservation programs and strategies for the nearshore identified in the marine component of the Oregon Conservation Strategy;

(b) Improving engagement of the public in hunting and fishing opportunities and in other outdoor recreation opportunities related to and in support of healthy fish, wildlife and habitats;

(c) Improving educational outreach and engagement of the public, including diverse and underserved communities, related to and in support of healthy fish, wildlife and habitats;

(d) Engaging in, and providing funding for, joint projects of the department and the State Parks and Recreation Department or other state agencies as recommended by the Oregon Conservation and Recreation Advisory Committee established under ORS 496.254; and

(e) Other conservation, management, research, habitat improvement, enforcement, outdoor recreation or education activities.

(3) The fund shall consist of:

(a) Moneys appropriated to the State Department of Fish and Wildlife for deposit in the fund or otherwise transferred to the fund; **and**

(b) Gifts, grants, contributions or other donations for use as described in subsection (2) of this section, that are received by the department from any public or private source and caused to be deposited and credited to the fund[; and].

[(c)] Moneys in the subaccount described in subsection (4) of this section.]

[(4)] The Private Forest Accord Mitigation Subaccount is established in the fund. The subaccount shall consist of moneys appropriated to the department for deposit in the subaccount or otherwise transferred to the subaccount and gifts, grants, contributions or other donations that are received by

the department from any public or private source and caused to be deposited and credited to the sub-account. Moneys in the subaccount may be used for:]

[(a) The purposes described in, and the administration of, section 32 of this 2022 Act.]

[(b) Conducting outreach to persons that own or operate an artificial obstruction, as defined in ORS 509.580, to further the goal of fish passage.]

[(c) Conducting outreach to persons that may undertake projects described in section 32 of this 2022 Act.]

[(5)] (4) The department and the Oregon Conservation and Recreation Advisory Committee shall jointly submit a biennial report to the Legislative Assembly as provided in ORS 293.640 regarding the expenditure of moneys deposited in the fund[, other than moneys deposited in the Private Forest Accord Mitigation Subaccount,] and on the status of various activities funded by the moneys.

[(6) The department and the Private Forest Accord Mitigation Advisory Committee shall jointly submit a biennial report to the Legislative Assembly as provided in ORS 293.640 regarding the expenditure of moneys deposited in the Private Forest Accord Mitigation Subaccount and on the status of various activities funded by the moneys.]

SECTION 67. ORS 496.254, as amended by section 29 of this 2022 Act, is amended to read:

496.254. (1) The Oregon Conservation and Recreation Advisory Committee is established as an advisory committee to the State Fish and Wildlife Commission and the State Department of Fish and Wildlife for the purpose of carrying out the duties described in subsection (2) of this section. The commission shall determine the number of members of the committee and the geographical representation by the members. The Governor shall appoint the members of the committee. The Associate Director of Outdoor Recreation, or the associate director's designee, shall serve as a nonvoting, ex officio member.

(2) The committee shall review department policies regarding the use of Oregon Conservation and Recreation Fund moneys[, other than policies regarding the use of Private Forest Accord Mitigation Subaccount moneys,] and make recommendations to the commission and the department regarding the use of fund moneys for implementing and administering department activities.

(3) Members of the committee may not receive compensation for service as members. However, subject to any applicable law regulating travel and other expenses of state officers and employees, a member may be reimbursed for actual and necessary travel and other expenses incurred in the performance of official duties from moneys available to the department for the purpose of reimbursement of committee members.

SECTION 68. ORS 527.620, as amended by section 40 of this 2022 Act, is amended to read:

527.620. As used in ORS 527.610 to 527.770, 527.990 and 527.992:

[(1) "Aquatic resource" means:]

[(a) A species addressed in the Private Forest Accord Report dated February 2, 2022, and published by the State Forestry Department on February 7, 2022, and the resources on which the species relies; or]

[(b) If a habitat conservation plan consistent with the Private Forest Accord Report has been approved, a species addressed in the habitat conservation plan and the resources on which the species relies.]

[(2)] (1) "Board" means the State Board of Forestry.

[(3)] (2) "Cumulative effects" means the impact on the environment which results from the incremental impact of the forest practice when added to other past, present and reasonably foreseeable future forest practices regardless of what governmental agency or person undertakes such other actions.

[(4)] (3) "DBH" means the diameter at breast height which is measured as the width of a standing tree at four and one-half feet above the ground, on the uphill side.

[(5)] (4) "Edge of the roadway" means:

(a) For interstate highways, the fence.

(b) For all other state highways, the outermost edge of pavement, or if unpaved, the edge of the shoulder.

[(6)] (5) "Forest practice" means any operation conducted on or pertaining to forestland, including but not limited to:

- (a) Reforestation of forestland;
- (b) Road construction and maintenance;
- (c) Harvesting of forest tree species;
- (d) Application of chemicals;
- (e) Disposal of slash; and
- (f) Removal of woody biomass.

[(7)] (6) "Forest tree species" means any tree species capable of producing logs, fiber or other wood materials suitable for the production of lumber, sheeting, pulp, firewood or other commercial forest products except trees grown to be Christmas trees as defined in ORS 571.505 on land used solely for the production of Christmas trees.

[(8)] (7) "Forestland" means land that is used for the growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.

[(9)] (8) "Harvest type 1" means an operation that requires reforestation but does not require wildlife leave trees. A harvest type 1 is an operation that leaves a combined stocking level of free to grow seedlings, saplings, poles and larger trees that is less than the stocking level established by rule of the board that represents adequate utilization of the productivity of the site.

[(10)] (9) "Harvest type 2" means an operation that requires wildlife leave trees but does not require reforestation. A harvest type 2 does not require reforestation because it has an adequate combined stocking of free to grow seedlings, saplings, poles and larger trees, but leaves:

- (a) On Cubic Foot Site Class I, II or III, fewer than 50 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre;
- (b) On Cubic Foot Site Class IV or V, fewer than 30 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre; or
- (c) On Cubic Foot Site Class VI, fewer than 15 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre.

[(11)] (10) "Harvest type 3" means an operation that requires reforestation and requires wildlife leave trees. This represents a level of stocking below which the size of operations is limited under ORS 527.740 and 527.750.

[(12)] (11) "Landowner" means any individual, combination of individuals, partnership, corporation or association of whatever nature that holds an ownership interest in forestland, including the state and any political subdivision thereof.

[(13)] (12) "Operation" means any commercial activity relating to the establishment, management or harvest of forest tree species except as provided by the following:

(a) The establishment, management or harvest of Christmas trees, as defined in ORS 571.505, on land used solely for the production of Christmas trees.

(b) The establishment, management or harvest of hardwood timber, including but not limited to hybrid cottonwood, that is:

(A) Grown on land that has been prepared by intensive cultivation methods and that is cleared of competing vegetation for at least three years after tree planting;

(B) Of a species marketable as fiber for inclusion in the furnish for manufacturing paper products;

(C) Harvested on a rotation cycle that is 12 or fewer years after planting; and

(D) Subject to intensive agricultural practices such as fertilization, cultivation, irrigation, insect control and disease control.

(c) The establishment, management or harvest of trees actively farmed or cultured for the production of agricultural tree crops, including nuts, fruits, seeds and nursery stock.

(d) The establishment, management or harvest of ornamental, street or park trees within an urbanized area, as that term is defined in ORS 221.010.

(e) The management or harvest of juniper species conducted in a unit of less than 120 contiguous acres within a single ownership.

(f) The establishment or management of trees intended to mitigate the effects of agricultural practices on the environment or fish and wildlife resources, such as trees that are established or managed for windbreaks, riparian filters or shade strips immediately adjacent to actively farmed lands.

(g) The development of an approved land use change after timber harvest activities have been completed and land use conversion activities have commenced.

[(14)] **(13)** “Operator” means any person, including a landowner or timber owner, who conducts an operation.

[(15)(a)] “Significant violation” means:]

[(A)] *Violation of ORS 527.670 (6) by engaging in an operation without filing the requisite notification; or]*

[(B)] *Continued operation in contravention of an order issued by the State Forester under ORS 527.680 (2)(a), (3) or (5); or]*

[(C)] *A violation resulting in major damage to a resource described in ORS 527.710 (2) for which restoration is expected to take more than 10 years.]*

[(b)] “Significant violation” does not include:]

[(A)] *Unintentional operation in an area outside an operating area of an operation for which sufficient notification was filed pursuant to ORS 527.670 (6);]*

[(B)] *Continued operation in contravention of an order issued by the State Forester under ORS 527.680 (2)(a), (3) or (5), where an operator, timber owner or landowner demonstrates that it did not receive the order; or]*

[(C)] *Failure to timely notify the State Forester of an intent to continue an operation into the next calendar year.]*

[(16)] **(14)** “Single ownership” means ownership by an individual, partnership, corporation, limited liability company, trust, holding company or other business entity, including the state or any political subdivision thereof. Single ownership includes ownership held under different names or titles where the same individual or individuals, or their heirs or assigns, are shareholders (other than those of public corporations whose stock is traded on the open market), partners, business trustees or officers, or otherwise have an interest in or are associated with each property.

[(17)] **(15)** “State Forester” means the State Forester or the duly authorized representative of the State Forester.

[(18)] **(16)** “Suitable hardwood seedlings” means any hardwood seedling that will eventually yield logs or fiber, or both, sufficient in size and quality for the production of lumber, plywood, pulp or other forest products.

[(19)] **(17)** “Timber owner” means any individual, combination of individuals, partnership, corporation or association of whatever nature, other than a landowner, that holds an ownership interest in any forest tree species on forestland.

[(20)] **(18)** “Visually sensitive corridor” means forestland extending outward 150 feet, measured on the slope, from the outermost edge of the roadway of a scenic highway referred to in ORS 527.755, along both sides for the full length of the highway.

[(21)] **(19)** “Wildlife leave trees” means trees or snags required to be retained as described in ORS 527.676 (1).

[(22)] **(20)** “Written plan” means a document prepared by an operator, timber owner or landowner that describes how the operation is planned to be conducted.

SECTION 69. ORS 527.630, as amended by section 41 of this 2022 Act, is amended to read:

527.630. (1) Forests make a vital contribution to Oregon by providing jobs, products, tax base and other social and economic benefits, by helping to maintain forest tree species, soil, air and water resources and by providing a habitat for wildlife and aquatic life. Therefore, it is declared to be the public policy of the State of Oregon to encourage economically efficient forest practices that ensure the continuous growing and harvesting of forest tree species and the maintenance of

forestland for such purposes as the leading use on privately owned land, consistent with sound management of soil, air, water, fish and wildlife resources and scenic resources within visually sensitive corridors as provided in ORS 527.755 and to ensure the continuous benefits of those resources for future generations of Oregonians.

(2) It is recognized that operations on forestland are already subject to other laws and to regulations of other agencies which deal primarily with consequences of such operations rather than the manner in which operations are conducted. It is further recognized that it is essential to avoid uncertainty and confusion in enforcement and implementation of such laws and regulations and in planning and carrying out operations on forestlands.

(3) To encourage forest practices implementing the policy of ORS 527.610 to 527.770, 527.990 and 527.992, it is declared to be in the public interest to vest in the State Board of Forestry exclusive authority to develop and enforce statewide and regional rules pursuant to ORS 527.710 and to coordinate with other state agencies and local governments which are concerned with the forest environment.

[(4) It is recognized that ensuring compliance with, and enforcing, ORS 527.610 to 527.770 and rules and orders adopted or issued thereunder is essential to protect Oregon's natural resources. It is further recognized that onsite inspections are necessary to further the policy of ORS 527.610 to 527.770, 527.990 and 527.992.]

[(5) It is recognized that enforcement of the policy of ORS 527.610 to 527.770, 527.990 and 527.992 is necessary to support the integrity of the policy and give the public confidence that standards for forest practices are being followed. It is further recognized that an effective enforcement program must include:]

[(a) Adequate training and education of enforcement officers, operators, timber owners and landowners.]

[(b) Clear technical guidance.]

[(c) Implementation expectations that are transparent and easily understood by operators, timber owners and landowners.]

[(6) It is declared to be the policy of the State of Oregon that the program for implementing enforcement under ORS 527.680, 527.683, 527.685, 527.690 and 527.700 be adequately funded, and that the board:]

[(a) Use inspections and enforcement as tools to deter future violations and to educate and train operators, timber owners and landowners.]

[(b) In exercising enforcement discretion, including discretion to impose penalties, prioritize addressing significant violations, other consequential violations and the actions of repeat violators.]

[(7) (4) The board may adopt and enforce rules addressing scenic considerations only in accordance with ORS 527.755.

[(8) (5) The board shall adopt and enforce forest practice rules to reduce the risk of serious bodily injury or death from a rapidly moving landslide only in accordance with ORS 527.710 (10). As used in this subsection, "rapidly moving landslide" has the meaning given in ORS 195.250.

[(9) (6) The State of Oregon should provide a stable regulatory environment to encourage investment in private forestlands.

SECTION 70. ORS 527.680, as amended by section 45 of this 2022 Act, is amended to read:

527.680. (1) Whenever the State Forester determines that an operator has committed a violation under ORS 527.990 (1), the State Forester may issue and serve a citation upon the operator or authorized representative. The State Forester shall cause a copy of the citation to be mailed or delivered to the timber owner and landowner. Whenever the State Forester determines that the landowner has failed to comply with the reforestation rules under ORS 527.710, the State Forester may issue and serve a citation upon the landowner or authorized representative. Each citation issued under this section shall specify the nature of the violation charged and any damage or unsatisfactory condition that has occurred as the result of such violation.

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

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

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

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

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

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

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

SECTION 71. ORS 527.685, as amended by section 46 of this 2022 Act, is amended to read:

527.685. (1) The State Board of Forestry shall by rule establish the amount of civil penalty that may be imposed for a particular violation. Except as provided in [*subsections (5) and (6)*] **subsection (5)** of this section, a civil penalty may not exceed [*\$10,000*] **\$5,000** per violation.

(2) In imposing a penalty authorized by this section, the State Forester may consider the following factors:

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

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

(c) The gravity and magnitude of the violation.

(d) Whether the violation was repeated or continuous.

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

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

(g) Any relevant rule of the board.

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

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

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

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

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

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

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

SECTION 72. ORS 527.714, as amended by section 47 of this 2022 Act, is amended to read:

527.714. (1) The rulemaking authority of the State Board of Forestry under ORS 527.610 to 527.770 consists generally of the following three types of rules:

(a) Rules adopted to implement administration, procedures or enforcement of ORS 527.610 to 527.770 that support but do not directly regulate standards of forest practices.

(b) Rules adopted to provide definitions or procedures for forest practices where the standards are set in statute.

(c) Rules adopted to implement the provisions of ORS 527.710 (2), (3), (6), (8), (9) and (10) that grant broad discretion to the board and that set standards for forest practices not specifically addressed in statute.

(2) When considering the adoption of a rule, and prior to the notice required pursuant to ORS 183.335, the board shall determine which type of rule described in subsection (1) of this section is being considered.

(3) If the board determines that a proposed rule is of the type described in subsection (1)(a) or (b) of this section, or if the proposed rule is designed only to clarify the meaning of rules already adopted or to make minor adjustments to rules already adopted that are of the type described in subsection (1)(c) of this section, rulemaking may proceed in accordance with ORS 183.325 to 183.410 and is not subject to the provisions of this section.

(4) If the board determines that a proposed rule is of the type described in subsection (1)(c) of this section, and the proposed rule would change the standards for forest practices, the board shall describe in its rule the purpose of the rule and the level of protection that is desired. *[If the proposed rule would change the standards for forest practices that relate to the protection of aquatic resources, the level of protection that is desired must be consistent with:]*

[(a) Requirements described in the Private Forest Accord Report dated February 2, 2022, and published by the State Forestry Department on February 7, 2022; or]

[(b) If a habitat conservation plan consistent with the Private Forest Accord Report has been approved, the terms of the habitat conservation plan.]

(5) If the board determines that a proposed rule is of the type described in subsection (1)(c) of this section, including a proposed amendment to an existing rule not qualifying under subsection (3) of this section, and the proposed rule would provide new or increased standards for forest practices,

the board may adopt such a rule only after determining that the following facts exist and standards are met:

[(a)(A)] (a) If forest practices continue to be conducted under existing regulations:

[(i)] (A) There is monitoring or research evidence that documents that degradation of resources maintained under ORS 527.710 (2) or (3) is likely; or

[(ii)] (B) In the case of rules proposed under ORS 527.710 (10), that there is a substantial risk of serious bodily injury or death; [or]

[(B) *The board has received reports produced by the Adaptive Management Program Committee and the Independent Research and Science Team described in sections 36 and 38 of this 2022 Act that review the new or increased standards the proposed rule would provide;*]

(b) If the resource to be protected is a wildlife species, the scientific or biological status of a species or resource site to be protected by the proposed rule has been documented using best available information;

(c) The proposed rule reflects available scientific information, [and, as appropriate,] the results of relevant monitoring and, **as appropriate**, adequate field evaluation at representative locations in Oregon;

(d) The objectives of the proposed rule are clearly defined, and the restrictions placed on forest practices as a result of adoption of the proposed rule:

(A)(i) Are to prevent harm or provide benefits to the resource or resource site for which protection is sought; or

(ii) In the case of rules proposed under ORS 527.710 (10), are to reduce risk of serious bodily injury or death; and

(B) Are directly related to the objective of the proposed rule and [materially] **substantially** advance its purpose; [and]

(e) The availability, effectiveness and feasibility of alternatives to the proposed rule, including nonregulatory alternatives, were considered, and the alternative chosen is the least burdensome to landowners and timber owners, in the aggregate, while still achieving the desired level of protection[.]; **and**

(f) The benefits to the resource, or in the case of rules proposed under ORS 527.710 (10), the benefits in reduction of risk of serious bodily injury or death, that would be achieved by adopting the rule are in proportion to the degree that existing practices of the landowners and timber owners, in the aggregate, are contributing to the overall resources concern that the proposed rule is intended to address.

(6) Nothing in subsection (5) of this section:

(a) Requires the board to call witnesses;

(b) Requires the board to allow cross-examination of witnesses;

(c) Restricts ex parte communications with the board or requires the board to place statements of such communications on the record;

(d) Requires verbatim transcripts of records of proceedings; or

(e) Requires depositions, discovery or subpoenas.

[(7) *If the board determines that a proposed rule is of the type described in subsection (1)(c) of this section, including a proposed amendment to an existing rule not qualifying under subsection (3) of this section, and that the proposed rule relates to aquatic resources, the board may adopt the rule only after considering reports from the Adaptive Management Program Committee and the Independent Research and Science Team.*]

[(8)] (7) If the board determines that a proposed rule is of the type described in subsection (1)(c) of this section, and the proposed rule would require new or increased standards for forest practices, as part of or in addition to the economic and fiscal impact statement required by ORS 183.335 (2)(b)(E), the board shall, prior to the close of the public comment period, prepare and make available to the public a comprehensive analysis of the economic impact of the proposed rule. The analysis shall include, but is not limited to:

(a) An estimate of the potential change in timber harvest as a result of the rule;

(b) An estimate of the overall statewide economic impact, including a change in output, employment and income related to:

(A) The forest products industry;

(B) Other private sectors such as commercial fishing, recreational fishing and other outdoor recreation; and

(C) Government sectors such as public water system providers, waste treatment and built and natural infrastructure;

(c) An estimate of the total economic impact on the forest products industry and common school and county forest trust land revenues, both regionally and statewide; and

(d) An assessment of the economic impact of the proposed rule on various types of affected forestland parcels and on various geographic locations that is derived from consulting stakeholders.

[9] (8) The provisions of this section do not apply to temporary rules adopted by the board.

SECTION 73. ORS 527.990, as amended by section 48 of this 2022 Act, is amended to read:

527.990. (1) Subject to ORS 153.022, violation of ORS 527.670, 527.672, 527.676, 527.740, 527.750[,] or 527.755[, 527.788 or 527.797,] or any rule promulgated under ORS 527.710 [or section 2 or 44 of this 2022 Act,] is a Class A misdemeanor. Each day of operation in violation of an order issued under ORS 527.680 (3) shall be deemed to be a separate offense.

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

SECTION 74. ORS 527.992, as amended by section 49 of this 2022 Act, is amended to read:

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

(a) The requirements of ORS 527.670, 527.672, 527.676, 527.740, 527.750[,] or 527.755[, 527.788 or 527.797].

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

(c) Any rule or standard of the State Board of Forestry adopted or issued pursuant to ORS 527.710 [or section 2 or 44 of this 2022 Act].

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

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

SECTION 75. ORS 610.060, as amended by section 26 of this 2022 Act, is amended to read:

610.060. [Except as provided in section 23 of this 2022 Act,] Nothing in the wildlife laws is intended to deny the right of any person to control predatory animals as provided in ORS 610.105.

SECTION 76. ORS 610.105, as amended by section 27 of this 2022 Act, is amended to read:

610.105. [Except as provided in section 23 of this 2022 Act,] Any person owning, leasing, occupying, possessing or having charge of or dominion over any land, place, building, structure, wharf, pier or dock which is infested with ground squirrels and other noxious rodents or predatory animals, as soon as their presence comes to the knowledge of the person, may, or the agent of the person may, proceed immediately and continue in good faith to control them by poisoning, trapping or other appropriate and effective means.

CONFORMING AMENDMENTS

SECTION 77. ORS 105.810 is amended to read:

105.810. (1) Except as provided in ORS 477.089 and 477.092 and subsections (4) to (7) of this section, whenever any person, without lawful authority, willfully injures or severs from the land of another any produce thereof or cuts down, girdles or otherwise injures or carries off any tree, timber or shrub on the land of another person, or of the state, county, United States or any public corporation, or on the street or highway in front of any person's house, or in any village, town or

city lot, or cultivated grounds, or on the common or public grounds of any village, town or city, or on the street or highway in front thereof, in an action by such person, village, town, city, the United States, state, county, or public corporation, against the person committing such trespasses if judgment is given for the plaintiff, it shall be given for treble the amount of damages claimed, or assessed for the trespass. In any such action, upon plaintiff's proof of ownership of the premises and the commission by the defendant of any of the acts mentioned in this section, it is prima facie evidence that the acts were committed by the defendant willfully, intentionally and without plaintiff's consent.

(2) A court may, in its discretion, award to a prevailing party under subsection (1) of this section reimbursement of reasonable costs of litigation including but not limited to investigation costs and attorney fees.

(3) A court may, in its discretion, award to a prevailing plaintiff under subsection (1) of this section reasonable costs of reforestation activities related to the injury sustained by the plaintiff.

(4) A contract logger is liable only for actual damages in an action under this section if:

(a) The contract logger conducts an operation under a signed, written contract with a person the contract logger reasonably believes to be the legal owner of the produce, trees, timber or shrubs in the operation area;

(b) The contract identifies the operation area by a metes and bounds description or other sufficient legal description;

(c) Before the contract logger begins harvesting in the operation area, the person who engages the contract logger under the contract:

(A) Locates, marks and protects from damage all survey monuments in the operation area;

(B) Flags, stakes or otherwise clearly marks the boundaries of the operation area; and

(C) Provides the contract logger with a copy of the deed, contract or other instrument that the person who engages the contract logger under the contract relies upon as proof of ownership of the produce, trees, timber or shrubs in the operation area;

(d) The contract logger verifies the deed, contract or instrument described in paragraph (c)(C) of this subsection against the metes and bounds description or other sufficient legal description in the contract;

(e) The contract logger retains a copy of the deed, contract or instrument described in paragraph (c)(C) of this subsection for at least three years; and

(f) The contract logger does not receive written notice that any person has a claim of title to the land or timber in the operation area that is adverse to the person who engages the contract logger under the contract.

(5) Subsection (4) of this section does not affect an action for double or treble damages against a contract logger for damages outside the operation area as described in subsection (4) of this section.

(6) If an action is brought under this section against a contract logger, and the contract logger was engaged to harvest the timber by a person who purported to own the timber or to have authority to harvest the timber, the person who engaged the contract logger must be joined in the action as a defendant unless jurisdiction over the person cannot be had. If a judgment is entered against the contract logger and against the person who engaged the contract logger, the contract logger shall not be required to pay any part of the judgment unless the plaintiff establishes that the judgment cannot be enforced against the person who engaged the contract logger. The plaintiff may enforce the judgment against the contract logger only if:

(a) The plaintiff makes a good faith effort for at least six months after the judgment becomes final and subject to execution to enforce the judgment against the person who engaged the contract logger; and

(b) The court determines, upon motion of the plaintiff, that all or part of the judgment cannot be collected from the person who engaged the contract logger.

(7) Subsections (2) and (3) of this section apply in an action against a contract logger under subsection (4) of this section.

- (8) For purposes of this section:
- (a) “Contract logger” means a person engaged in a commercial timber harvesting operation.
 - (b) “Operation” has the meaning given **that term** in ORS 527.620 [(12)].

APPROPRIATIONS

SECTION 78. Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Environmental Quality by section 1 (2), chapter 673, Oregon Laws 2021, for the biennium ending June 30, 2023, for water quality, is increased by \$352,217 to carry out the provisions of sections 1 to 8, 10 to 25, 30 to 39, 42 to 44 and 50 to 52 of this 2022 Act and the amendments to statutes by sections 9, 26 to 29, 40, 41 and 45 to 49 of this 2022 Act.

SECTION 79. Notwithstanding any other provision of law, the General Fund appropriation made to the State Department of Fish and Wildlife by section 1 (2), chapter 679, Oregon Laws 2021, for the biennium ending June 30, 2023, for wildlife division, is increased by \$228,558 to carry out the provisions of sections 1 to 8, 10 to 25, 30 to 39, 42 to 44 and 50 to 52 of this 2022 Act and the amendments to statutes by sections 9, 26 to 29, 40, 41 and 45 to 49 of this 2022 Act.

SECTION 80. Notwithstanding any other provision of law, the General Fund appropriation made to the State Department of Fish and Wildlife by section 1 (3), chapter 679, Oregon Laws 2021, for the biennium ending June 30, 2023, for administrative services division, is increased by \$567,897 to carry out the provisions of sections 1 to 8, 10 to 25, 30 to 39, 42 to 44 and 50 to 52 of this 2022 Act and the amendments to statutes by sections 9, 26 to 29, 40, 41 and 45 to 49 of this 2022 Act.

SECTION 81. Notwithstanding any other provision of law, the General Fund appropriation made to the State Department of Fish and Wildlife by section 1 (7), chapter 679, Oregon Laws 2021, for the biennium ending June 30, 2023, for habitat division, is increased by \$826,619 to carry out the provisions of sections 1 to 8, 10 to 25, 30 to 39, 42 to 44 and 50 to 52 of this 2022 Act and the amendments to statutes by sections 9, 26 to 29, 40, 41 and 45 to 49 of this 2022 Act.

SECTION 82. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (7), chapter 679, Oregon Laws 2021, for the biennium ending June 30, 2023, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and including federal funds from the Pacific Coastal Salmon Recovery Fund, but excluding lottery funds and federal funds not described in section 2, chapter 679, Oregon Laws 2021, collected or received by the State Department of Fish and Wildlife, for habitat division, is increased by \$64,907 to carry out the provisions of sections 1 to 8, 10 to 25, 30 to 39, 42 to 44 and 50 to 52 of this 2022 Act and the amendments to statutes by sections 9, 26 to 29, 40, 41 and 45 to 49 of this 2022 Act.

SECTION 83. Notwithstanding any other provision of law, there is appropriated to the State Department of Fish and Wildlife, for the biennium ending June 30, 2023, out of the General Fund, the amount of \$10,000,000, for deposit in the Private Forest Accord Mitigation Subaccount established within the Oregon Conservation and Recreation Fund established by ORS 496.252, for use by the Private Forest Accord Grant Program described in section 32 of this 2022 Act.

SECTION 84. Notwithstanding any other provision of law, the General Fund appropriation made to the State Forestry Department by section 1 (4), chapter 605, Oregon Laws 2021, for the biennium ending June 30, 2023, for private forests, is increased by \$14,024,057 to carry out the provisions of sections 1 to 8, 10 to 25, 30 to 39, 42 to 44 and 50 to 52 of this 2022 Act and the amendments to statutes by sections 9, 26 to 29, 40, 41 and 45 to 49 of this 2022 Act.

SECTION 85. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (1), chapter 605, Oregon Laws 2021, for the biennium

ending June 30, 2023, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and including federal funds from the United States Forest Service for fire protection and for research projects, but excluding lottery funds and federal funds not described in section 2, chapter 605, Oregon Laws 2021, collected or received by the State Forestry Department, for agency administration, is increased by \$1,021,131 to carry out the provisions of sections 1 to 8, 10 to 25, 30 to 39, 42 to 44 and 50 to 52 of this 2022 Act and the amendments to statutes by sections 9, 26 to 29, 40, 41 and 45 to 49 of this 2022 Act.

SECTION 86. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (5), chapter 605, Oregon Laws 2021, for the biennium ending June 30, 2023, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and including federal funds from the United States Forest Service for fire protection and for research projects, but excluding lottery funds and federal funds not described in section 2, chapter 605, Oregon Laws 2021, collected or received by the State Forestry Department, for private forests, is increased by \$1,625,000 to carry out the provisions of sections 1 to 8, 10 to 25, 30 to 39, 42 to 44 and 50 to 52 of this 2022 Act and the amendments to statutes by sections 9, 26 to 29, 40, 41 and 45 to 49 of this 2022 Act.

CAPTIONS

SECTION 87. The unit captions used in this 2022 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2022 Act.

EMERGENCY CLAUSE

SECTION 88. This 2022 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2022 Act takes effect on its passage.

Passed by Senate March 2, 2022

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House March 3, 2022

.....
Dan Rayfield, Speaker of House

Received by Governor:

.....M,....., 2022

Approved:

.....M,....., 2022

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2022

.....
Shemia Fagan, Secretary of State