

A-Engrossed
Senate Bill 1502

Ordered by the Senate February 24
Including Senate Amendments dated February 24

Sponsored by Senator COURTNEY

SUMMARY

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

Creates income or corporate excise tax credit allowed to small forestland owner that elects to observe riparian timber harvest restriction applicable to large forestland owner, in lieu of using harvest option available to small forestland owner. **Includes no-harvest dry channel portion of small nonfish perennial stream in forest conservation area eligible for tax credit. Prohibits transfer of credit to successor forestland owner.** Provides for allowance of credit and retention of harvest restrictions for 50 years.

Applies to all tax years beginning on or after January 1, 2023.

Allows credit to be used against estate tax, in the alternative to use as income tax credit. Applies to estates of decedents dying on or after January 1, 2023.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to tax credits for small forestland owners; creating new provisions; amending ORS 314.772
3 and 318.031; and prescribing an effective date.

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

5 **SECTION 1. Sections 2 to 6 of this 2022 Act are added to and made a part of ORS chapter**
6 **315.**

7 **SECTION 2. (1) As used in sections 2 to 6 of this 2022 Act:**

8 (a) **"Common ownership" means direct ownership by one or more individuals or owner-**
9 **ship by a corporation, partnership, association or other entity in which an individual owns**
10 **a significant interest.**

11 (b) **"Dry channel area" means that area between the inside edge of the small forest**
12 **owner minimum option and the edge of the dry stream channel that:**

13 (A) **Is within a surveyed dry channel portion of a small nonfish perennial stream in**
14 **Western Oregon that under the small forest owner minimum option is a required no-harvest**
15 **buffer;**

16 (B) **Does not flow water year-round; and**

17 (C) **Is 100 feet or more in length.**

18 (c) **"Forest conservation area" means a riparian forestland area that is not harvested,**
19 **that is adjacent to a harvested riparian area and that is the excess riparian area allowed for**
20 **harvest under the small forest owner minimum option beyond that allowed under the**
21 **standard practice harvest restrictions, and any adjacent dry channel area.**

22 (d) **"Forestland" has the meaning given that term in ORS 527.620.**

23 (e) **"Professional forester" means a person that is engaged in the business of appraising**

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

1 or valuing timber or forestland as described in ORS 674.100.

2 (f) "Small forestland owner" means a person that owns or holds common ownership in
3 fewer than 5,000 acres of forestland.

4 (g) "Small forest owner minimum option" means the option to harvest timber allowed to
5 a small forestland owner under rules adopted under the Oregon Forest Practices Act.

6 (h) "Standard practice harvest restrictions" means the harvest restrictions applicable to
7 large forestland owners under the Oregon Forest Practices Act.

8 (i) "Stumpage value" means the value of standing timber based on the value that would
9 be received for the timber if harvested and delivered to a mill, minus the cost of harvest and
10 delivery to the mill.

11 (j) "Timber harvest" means a harvest type 1, harvest type 2 or harvest type 3, as those
12 terms are defined in ORS 527.620.

13 (k) "Western Oregon" means that area west of the crest of the Cascade Mountains.

14 (2)(a) A credit against taxes that are otherwise due under ORS chapter 316 or, if the
15 taxpayer is a corporation, under ORS chapter 317 or 318 is allowed to a taxpayer that is a
16 small forestland owner that is eligible to conduct a timber harvest using a small forest owner
17 minimum option and elects to use standard practice harvest restrictions instead. The credit
18 shall be allowed for the tax year in which the timber harvest is completed.

19 (b) A credit under this section may not be transferred to a successor forestland owner.

20 (3) In order to be eligible for a credit under this section, a small forestland owner must:

21 (a) Have harvested not more than two million board feet of merchantable forest products
22 from forestland in this state owned by the small forestland owner, as averaged over the
23 three years immediately preceding the date of filing a notification of operation as described
24 in section 3 of this 2022 Act;

25 (b) Conduct a timber harvest in an area that is:

26 (A) Adjacent to a riparian area subject to the Oregon Forest Practices Act; and

27 (B) Equal in size to or larger than that portion of the forest conservation area that the
28 small forestland owner elects not to harvest and upon which the small forestland owner
29 claims the credit; and

30 (c) Abide by the standard practice harvest restrictions, which shall remain in effect for
31 the forest conservation area for which the small forestland owner claims the credit for 50
32 years beginning with the date on which the certification is issued under section 3 of this 2022
33 Act.

34 (4) The amount of the credit allowed under this section shall be based on the stumpage
35 value of timber within the forest conservation area and shall be calculated as provided in
36 section 4 of this 2022 Act.

37 (5) Prior to claiming the credit allowed under this section, a small forestland owner is
38 required to receive written certification of eligibility from the State Forestry Department,
39 as provided in section 3 of this 2022 Act.

40 (6) Upon the death of a small forestland owner that holds a certification under section 3
41 of this 2022 Act, and to the extent that any amount of credit remains, the credit allowed
42 under this section:

43 (a) May be used by the executor of the small forestland owner's estate:

44 (A) As a credit against taxes imposed under ORS chapter 316, 317 or 318; and

45 (B) As provided in section 9 of this 2022 Act, as a credit against estate tax imposed under

1 **ORS chapter 118 on the estate of the small forestland owner; and**

2 **(b) May be used, to the extent remaining after application of paragraph (a) of this sub-**
3 **section, by the heirs or devisees of the small forestland owner as a credit against the taxes**
4 **imposed under ORS chapter 316, 317 or 318.**

5 **(7) The credit allowed under this section may not exceed the tax liability of the taxpayer**
6 **for the tax year.**

7 **(8) A forest conservation area for which a credit is allowed under this section:**

8 **(a) May not be disqualified from eligibility for special assessment as forestland under**
9 **ORS 321.257 to 321.390 or 321.805 to 321.855 or from qualification for small tract forestland**
10 **assessment under 321.700 to 321.754 solely due to the use of the credit allowed under this**
11 **section.**

12 **(b) Shall remain eligible for the deferral allowed under ORS 308A.119, if otherwise eligible.**

13 **(c) Shall be classified as described in ORS 321.210 as land class FX.**

14 **(9) Any tax credit otherwise allowable under this section that is not used by the taxpayer**
15 **in a particular tax year may be carried forward and offset against the taxpayer's tax liability**
16 **in any succeeding tax year thereafter, and may be carried forward to nonconsecutive tax**
17 **years.**

18 **(10) A nonresident shall be allowed the credit under this section. The credit shall be**
19 **computed in the same manner and be subject to the same limitations as the credit granted**
20 **to a resident.**

21 **(11) The State Forestry Department, after consultation with the Department of Revenue,**
22 **shall adopt rules for the purposes of sections 2 to 6 of this 2022 Act, including policies and**
23 **procedures for certifying taxpayers as eligible for the credit allowed under this section as**
24 **required in section 3 of this 2022 Act.**

25 **(12) The Department of Revenue shall adopt rules for the purposes of sections 2 to 6 of**
26 **this 2022 Act.**

27 **SECTION 3. (1) In order to obtain certification of eligibility from the State Forestry De-**
28 **partment for a tax credit allowed under section 2 of this 2022 Act, a small forestland owner**
29 **must:**

30 **(a) File, as provided in ORS 527.670, a notification of operation with the State Forester**
31 **for an operating area that includes the forest conservation area for which the small**
32 **forestland owner seeks a credit under section 2 of this 2022 Act;**

33 **(b) Indicate in the notification of operation that the small forestland owner intends to**
34 **use the standard practice harvest restrictions in lieu of the small forest owner minimum**
35 **option;**

36 **(c) Submit to the department an application for certification under this section; and**

37 **(d) Provide documentation of stumpage values and costs of appraisal to the department**
38 **after filing the notification of operation and within three months after the timber harvest**
39 **has been completed.**

40 **(2) The State Forestry Department shall timely provide written certification to taxpayers**
41 **that are eligible to claim the credit under section 2 of this 2022 Act.**

42 **(3) A small forestland owner that receives certification under this section must:**

43 **(a) Sign and record in the deed records for the county where the eligible forest conser-**
44 **vation area is located an irrevocable deed restriction prohibiting the owner and the owner's**
45 **successors in interest from conducting a harvest or otherwise removing trees within the**

1 forest conservation area for which a credit has been claimed. The deed restriction shall allow
2 for incidental tree removal and for tree removal for public safety purposes. The deed re-
3 striction shall specify the amount of the credit and the expiration date of the harvest re-
4 striction on the forest conservation area. The State Forestry Department shall provide the
5 small forestland owner with appropriate documentation for this purpose.

6 (b) Maintain the written documentation of the amount certified for tax credit under this
7 section, and the amount of credit claimed, in its records as long as any tax return remains
8 open for years in which the credit has been claimed, and provide the written documentation
9 to the Department of Revenue upon request.

10 (c) Provide documentation of all costs claimed as part of the credit, including costs of
11 appraisal and costs to file and record the deed restriction required under this section.

12 (d) Notify any immediate successor owner of the forest conservation area of the terms
13 of the credit and the potential obligation of successor owners to repay the amount of credit
14 allowed upon violation of the applicable harvest restrictions as described in section 5 of this
15 2022 Act.

16 (4) The State Forestry Department shall:

17 (a) Maintain in the department reporting and notice system operated under ORS 527.786
18 to 527.793 records of harvest restrictions applicable to certifications issued under this sec-
19 tion.

20 (b) Provide information to the Department of Revenue about all certifications issued
21 under this section, if required by the Department of Revenue under ORS 315.058.

22 **SECTION 4.** (1) The amount of the tax credit allowed under section 2 of this 2022 Act
23 shall be the sum of:

24 (a) The certified stumpage value of standing timber in that portion of the forest conser-
25 vation area that is not harvested as a result of using the standard practice harvest re-
26 strictions in lieu of the small forest owner minimum option, using the standard measuring
27 techniques of professional foresters;

28 (b) The cost to the small forestland owner of establishing the stumpage value, including
29 the cost of appraisal performed by a professional forester, and of filing and recording a deed
30 restriction as described in section 3 (3) of this 2022 Act; and

31 (c) If applicable, one-half of the certified stumpage value of retained timber in a dry
32 channel area adjacent to the forest conservation area.

33 (2) If the small forestland owner is barred from using the small forest owner minimum
34 option by the horizontal lineal feet limitation applicable to fifth field watersheds, the certified
35 stumpage value described in subsection (1)(a) of this section shall be multiplied by 125 per-
36 cent.

37 (3) The applicable stumpage values under this section shall be the values as of the date
38 of filing a notification of operation under ORS 527.670, as described in section 3 (1)(a) of this
39 2022 Act, and shall be calculated using one of the following methods:

40 (a) The conversion return method, in which the volume of timber being retained is de-
41 termined by species and log grades, and a value is established from current delivered log
42 price information, less a reasonable cost for harvest and delivery, for the area in which the
43 retained timber would ordinarily be sold.

44 (b) The actual comparison method, which may be used if the timber being retained is
45 similar in species and log grades to the timber being harvested, and which is calculated using

1 actual revenues from the timber being harvested by the small forestland owner in the har-
2 vest area adjacent to the forest conservation area.

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

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

11 **SECTION 5.** (1) If a small forestland owner, or the owner's estate, heirs or devisees,
12 elects to conduct a timber harvest within a forest conservation area for which a tax credit
13 has been allowed under section 2 of this 2022 Act and for which a harvest restriction has
14 been recorded or otherwise elects to remove the harvest restriction, the certification of the
15 credit shall be revoked and the Department of Revenue may proceed to collect any amounts
16 not paid as a result of the credit, as provided in ORS 315.061.

17 (2)(a) If the timber harvest or the removal of a harvest restriction that results in revo-
18 cation is conducted by an owner other than the small forestland owner that originally re-
19 ceived certification for the credit under section 3 of this 2022 Act, that successor owner shall
20 be liable for the entire amount certified for credit under section 3 of this 2022 Act. Interest
21 shall be charged at the rate established in ORS 305.220 from the date of transfer of the title
22 to the successor owner.

23 (b) A revocation under this subsection does not impair the right of a prior owner to claim
24 the credit.

25 (3) After repayment is complete, the small forestland owner shall notify the State
26 Forestry Department of the repayment and the department shall remove the record of the
27 harvest restriction from the department reporting and notice system operated under ORS
28 527.786 to 527.793. The small forestland owner shall cause the deed restriction to be removed
29 from the county deed records. The department shall provide the small forestland owner with
30 appropriate documentation for this purpose.

31 (4) The small forestland owner that conducts the timber harvest shall be responsible for
32 any penalties imposed for violations of the Oregon Forest Practices Act arising from the
33 harvest.

34 **SECTION 6.** If the credit allowed under section 2 of this 2022 Act is repealed, or is al-
35 lowed by the Legislative Assembly to expire, taxpayers that have previously received certi-
36 fication shall be allowed to continue to claim the credit. Any deed restrictions associated
37 with the credit shall be retained.

38 **SECTION 7.** Notwithstanding ORS 315.037, section 2 of this 2022 Act applies to all tax
39 years beginning on or after January 1, 2023.

40 **SECTION 8.** Section 9 of this 2022 Act is added to and made a part of ORS chapter 118.

41 **SECTION 9.** (1) The definitions in section 2 of this 2022 Act apply to this section.

42 (2) If, at the date of death, a decedent held the certification for a credit under section 2
43 of this 2022 Act, the estate of the decedent shall be allowed a credit for use of the small
44 forest owner minimum option, as provided in section 2 of this 2022 Act, to the extent that
45 the credit has not been used to offset income taxes.

1 **(3) If the forest conservation area for which a credit under section 2 of this 2022 Act was**
2 **allowed is contained in the decedent's estate, and if the timber in the forest conservation**
3 **area is subsequently harvested or otherwise removed in violation of the harvest restriction**
4 **recorded for the forest conservation area, the Department of Revenue may impose additional**
5 **tax, interest and penalties under ORS 118.005 to 118.540. The additional tax liability shall be**
6 **the amount of credit used against the decedent's taxable estate.**

7 **(4) The estate shall provide notice of the amount of credit received to the heirs or**
8 **devisees, who will maintain records of the credit used.**

9 **(5) Any unused amount of credit may be distributed to the heirs or devisees for use as**
10 **a credit against the taxes imposed under ORS chapter 316, 317 or 318.**

11 **SECTION 10. Section 9 of this 2022 Act applies to estates of decedents dying on or after**
12 **January 1, 2023.**

13 **SECTION 11.** ORS 314.772 is amended to read:

14 314.772. (1) Except as provided in ORS 314.766 (5)(b), the tax credits allowed or allowable to a
15 C corporation for purposes of ORS chapter 317 or 318 shall not be allowed to an S corporation. The
16 business tax credits allowed or allowable for purposes of ORS chapter 316 shall be allowed or are
17 allowable to the shareholders of the S corporation.

18 (2) In determining the tax imposed under ORS chapter 316, as provided under ORS 314.763, on
19 income of the shareholder of an S corporation, there shall be taken into account the shareholder's
20 pro rata share of business tax credit (or item thereof) that would be allowed to the corporation (but
21 for subsection (1) of this section) or recapture or recovery thereof. The credit (or item thereof), re-
22 capture or recovery shall be passed through to shareholders in pro rata shares as determined in the
23 manner prescribed under section 1377(a) of the Internal Revenue Code.

24 (3) The character of any item included in a shareholder's pro rata share under subsection (2)
25 of this section shall be determined as if such item were realized directly from the source from which
26 realized by the corporation, or incurred in the same manner as incurred by the corporation.

27 (4) If the shareholder is a nonresident and there is a requirement applicable for the business tax
28 credit that in the case of a nonresident the credit be allowed in the proportion provided in ORS
29 316.117, then that provision shall apply to the nonresident shareholder.

30 (5) As used in this section, "business tax credit" means the following credits: ORS 315.104
31 (forestation and reforestation), ORS 315.138 (fish screening, by-pass devices, fishways), ORS 315.141
32 (biomass production for biofuel), ORS 315.156 (crop gleanings), ORS 315.164 and 315.169 (agriculture
33 workforce housing), ORS 315.176 (bovine manure), ORS 315.204 (dependent care assistance), ORS
34 315.208 (dependent care facilities), ORS 315.213 (contributions for child care), ORS 315.237 (employee
35 and dependent scholarships), ORS 315.271 (individual development accounts), ORS 315.304 (pollution
36 control facility), ORS 315.326 (renewable energy development contributions), ORS 315.331 (energy
37 conservation projects), ORS 315.336 (transportation projects), ORS 315.341 (renewable energy re-
38 source equipment manufacturing facilities), ORS 315.354 and 469B.151 (energy conservation facili-
39 ties), ORS 315.506 (tribal taxes on reservation enterprise zones and reservation partnership zones),
40 ORS 315.507 (electronic commerce), ORS 315.514 (film production development contributions), ORS
41 315.523 (employee training programs), ORS 315.533 (low income community jobs initiative), ORS
42 315.593 (short line railroads), ORS 315.640 (university venture development funds), ORS 315.643
43 (Opportunity Grant Fund contributions), ORS 315.675 (Trust for Cultural Development Account
44 contributions), ORS 317.097 (loans for affordable housing), ORS 317.124 (long term enterprise zone
45 facilities), ORS 317.147 (loans for agriculture workforce housing), ORS 317.152 (qualified research

1 expenses) and ORS 317.154 (alternative qualified research expenses) and section 9, chapter 774,
2 Oregon Laws 2013 (alternative fuel vehicle contributions), **and section 2 of this 2022 Act (small**
3 **forest option).**

4 **SECTION 12.** ORS 318.031 is amended to read:

5 318.031. It being the intention of the Legislative Assembly that this chapter and ORS chapter
6 317 shall be administered as uniformly as possible (allowance being made for the difference in im-
7 position of the taxes), ORS 305.140 and 305.150, ORS chapter 314 and the following sections are in-
8 corporated into and made a part of this chapter: ORS 315.104, 315.141, 315.156, 315.176, 315.204,
9 315.208, 315.213, 315.304, 315.326, 315.331, 315.336, 315.506, 315.507, 315.523, 315.533, 315.593 and
10 315.643 **and section 2 of this 2022 Act** (all only to the extent applicable to a corporation) and ORS
11 chapter 317.

12 **SECTION 13.** **This 2022 Act takes effect on the 91st day after the date on which the 2022**
13 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

14