

A-Engrossed
House Bill 3109

Ordered by the House April 21
Including House Amendments dated April 21

Sponsored by Representatives GARRETT, GILLIAM, Senator DEVLIN; Senator ATKINSON

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.

Expands state policy relating to ecosystems. Adds ecosystem services to principles guiding state *[land use program]* **water quality program and state fill-removal program**.

Directs Governor's office to facilitate review of state conservation plans. Directs Institute for Natural Resources to provide information to *[local governments, state agencies, federal agencies and conservation organizations]* **specified entities** in order to assist in development of integrated ecosystem services methodologies.

Authorizes state agencies **and local governments** to allow use of credits for ecosystems services as compensatory mitigation. Specifies circumstances under which state agency may purchase **or receive** credits for ecosystem services.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to ecosystem services; creating new provisions; amending ORS 196.805, 468.583 and
3 468B.015; and declaring an emergency.

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

5
6 **STATE POLICY REGARDING ECOSYSTEM SERVICES**

7
8 **SECTION 1.** ORS 468.583 is amended to read:

9 468.583. **(1)** It is the policy of this state to:

10 **(a)** Support the maintenance, enhancement and restoration of ecosystem services throughout
11 Oregon, focusing on the protection of land, water, air, soil and native flora and fauna[.];

12 **(b)** **Favor approaches to compliance with state regulatory requirements that maintain the**
13 **integrity of ecosystem services at the watershed or other appropriate landscape scale;**

14 **(c)** **Conserve ecosystems in a manner that provides long-term ecological, economic and**
15 **social benefits; and**

16 **(d)** **Provide incentives to private landowners to conserve ecosystem services.**

17 **(2)** **State agencies and local governments are encouraged to adopt and implement pro-**
18 **grams that use market-based approaches to conserve or enhance ecosystem services as one**
19 **approach to meet conservation, economic and environmental regulatory goals within the**
20 **context of existing programs. Such market-based programs should, to the greatest extent**
21 **practicable, be designed to:**

22 **(a)** **Provide an opportunity for added economic return to agricultural and forest land-**
23 **owners who exercise good stewardship;**

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 (k) Provide for the monitoring of cumulative effects and overall program effectiveness;
2 and

3 (L) Are flexible enough to allow private landowners to receive payments for multiple
4 types of ecosystem services.

5 (2) The Institute for Natural Resources shall make any information relevant to inte-
6 grated ecosystem assessment methodologies developed under subsection (1) of this section
7 available on its website.

8
9 STATE AGENCIES AND LOCAL GOVERNMENTS

10
11 **SECTION 4.** (1) State agencies and local governments may allow the use of credits for
12 ecosystem services for compensatory mitigation and water quality credit trading. If credits
13 are used, state agencies and local governments may ensure that:

14 (a) Projects result in a net gain in overall ecosystem services, with a clear emphasis on
15 the most sensitive resources;

16 (b) Long-term ecological viability is considered, and preference is given to sites with the
17 greatest potential to endure;

18 (c) Mitigation and trading investments are structured for the protection and enhance-
19 ment of the priority resources identified in state and local conservation plans;

20 (d) The acquisition of credits for ecosystem services is allowed in advance of compliance
21 needs;

22 (e) Service area boundaries are, to the extent practicable, flexible enough to capture
23 significant ecological benefits but do not result in the severe loss of localized ecological
24 function in favor of restoration in a distant location;

25 (f) Ecological assessments for mitigation purposes are, to the extent practicable,
26 functions-based, where methodologies are available to quantify ecological functions; and

27 (g) Preservation and restoration are both considered appropriate for mitigation and
28 trading.

29 (2)(a) State agencies and local governments are encouraged to compare cost and consider
30 natural infrastructure as part of, or in lieu of, new development projects and infrastructure.

31 (b) In order to encourage state agencies and local governments to compare cost and
32 consider natural infrastructure as described in paragraph (a) of this subsection, the Oregon
33 Watershed Enhancement Board is encouraged to coordinate with state agencies, local gov-
34 ernments and the private sector to develop technical assistance tools that support and fa-
35 cilitate the use of natural infrastructure as part of, or in lieu of, new development projects
36 and infrastructure.

37 (3) State agencies and local governments are encouraged to participate in public-private
38 partnerships to develop, test and implement ecosystem services approaches and methodol-
39 ogies.

40 (4) State agencies and local governments are encouraged to coordinate with federal
41 agencies when implementing programs related to ecosystem services.

42 **SECTION 5.** (1) State natural resource agencies, in implementing their duties and in
43 providing any grants for conservation purposes, are encouraged, to the greatest extent
44 practicable, to undertake projects and programs that:

45 (a) Are consistent with local or state conservation plans;

1 (b) **Ensure long-term environmental stewardship;**

2 (c) **Address multiple conservation values, especially resilience to challenges related to**
3 **climate change, carbon sequestration, water quantity and quality and biodiversity;**

4 (d) **Emphasize the protection of high-quality, functioning ecosystems;**

5 (e) **Focus on restoration where restoration efforts will most likely be successful;**

6 (f) **Provide incentives to private landowners who voluntarily implement conservation**
7 **measures on their property; and**

8 (g) **Are relatively low cost.**

9 (2) **In any documents related to grants for conservation purposes, state natural resource**
10 **agencies are encouraged to specify the circumstances under which ecosystem services may**
11 **be sold to third parties.**

12 **SECTION 6. A state agency may purchase or receive credits for ecosystem services:**

13 (1) **To comply with mitigation requirements or advance the mission of the state agency**
14 **to achieve ecological outcomes.**

15 (2) **In advance of any mitigation requirements to ensure that the state agency mitigates**
16 **the impacts of the agency's development projects.**

17 (3) **As part of grant or landowner conservation incentive programs administered by a**
18 **state agency or as part of voluntary ecosystem services markets.**

19
20 **WATER QUALITY**

21
22 **SECTION 7. ORS 468B.015 is amended to read:**

23 468B.015. Whereas pollution of the waters of the state constitutes a menace to public health and
24 welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life and impairs domestic,
25 agricultural, industrial, recreational and other legitimate beneficial uses of water, and whereas the
26 problem of water pollution in this state is closely related to the problem of water pollution in ad-
27 joining states, it is hereby declared to be the public policy of the state:

28 (1) **To conserve the waters of the state through innovative approaches, including but not limited**
29 **to the appropriate reuse of water and wastes;**

30 (2) **To protect, maintain and improve the quality of the waters of the state for public water**
31 **supplies, for the propagation of wildlife, fish and aquatic life and for domestic, agricultural, indus-**
32 **trial, municipal, recreational and other legitimate beneficial uses;**

33 (3) **To provide that no waste be discharged into any waters of this state without first receiving**
34 **the necessary treatment or other corrective action to protect the legitimate beneficial uses of such**
35 **waters;**

36 (4) **To provide for the prevention, abatement and control of new or existing water pollution;**
37 **[and]**

38 (5) **To cooperate with other agencies of the state, agencies of other states and the federal gov-**
39 **ernment in carrying out these objectives[.]; and**

40 (6) **To protect, restore and enhance ecosystem services, as defined in ORS 468.581, in**
41 **implementing the provisions of this chapter.**

42
43 **FILL-REMOVAL**

44
45 **SECTION 8. ORS 196.805 is amended to read:**

1 196.805. (1) The protection, conservation and best use of the water resources of this state are
2 matters of the utmost public concern. Streams, lakes, bays, estuaries and other bodies of water in
3 this state, including not only water and materials for domestic, agricultural and industrial use but
4 also habitats and spawning areas for fish, avenues for transportation and sites for commerce and
5 public recreation, are vital to the economy and well-being of this state and its people. Unregulated
6 removal of material from the beds and banks of the waters of this state may create hazards to the
7 health, safety and welfare of the people of this state. Unregulated filling in the waters of this state
8 for any purpose, may result in interfering with or injuring public navigation, fishery and recre-
9 ational uses of the waters. In order to provide for the best possible use of the water resources of
10 this state, it is desirable to centralize authority in the Director of the Department of State Lands,
11 and implement control of the removal of material from the beds and banks or filling of the waters
12 of this state.

13 (2) **When administering fill and removal statutes**, the director shall take into consideration
14 all beneficial uses of water including **protection, restoration and enhancement of ecosystem**
15 **services, as defined in ORS 468.581, and** streambank protection [*when administering fill and re-*
16 *moval statutes*].

17 (3) There shall be no condemnation, inverse condemnation, other taking, or confiscating of
18 property under ORS 196.600 to 196.905 without due process of law.

19 (4) The director shall delineate wetlands in accordance with the United States Army Corps of
20 Engineers Wetlands Delineation Manual of 1987, or subsequent federal manual as adopted by rule
21 by the director, and applicable guidance issued by the United States Army Corps of Engineers for
22 the area in which the wetlands are located.

23 (5) The Department of State Lands shall give priority to the review of wetland delineation re-
24 ports submitted with or in advance of an application for fill or removal of material from the waters
25 of this state.

26
27 **MISCELLANEOUS**

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29 **SECTION 9. Sections 3 to 6 of this 2011 Act are added to and made a part of ORS 468.581**
30 **to 468.587.**

31 **SECTION 10. The unit captions used in this 2011 Act are provided only for the conven-**
32 **ience of the reader and do not become part of the statutory law of this state or express any**
33 **legislative intent in the enactment of this 2011 Act.**

34
35 **EMERGENCY CLAUSE**

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37 **SECTION 11. This 2011 Act being necessary for the immediate preservation of the public**
38 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
39 **on its passage.**