

House Bill 3109

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 **as introduced**.

Expands state policy relating to ecosystems. Adds ecosystem services to principles guiding state land use 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 in order to assist in development of integrated ecosystem services methodologies.

Authorizes state agencies to allow use of credits for ecosystem services as compensatory mitigation. Specifies circumstances under which state agency may purchase 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 197.010 and 468.583; and
3 declaring an emergency.

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

STATE POLICY REGARDING ECOSYSTEM SERVICES

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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[.]; **and**

12 (b) **Conserve ecosystems in a manner that provides long-term ecological, economic and**
13 **social benefits.**

14 (2) **State agencies and local governments are encouraged to adopt and implement pro-**
15 **grams that use market-based approaches to conserve or enhance ecosystem services as one**
16 **approach to meet conservation and economic goals within the context of existing programs.**
17 **Such market-based programs shall be designed to:**

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

20 (b) **Result in restoration and maintenance jobs that provide family wages;**

21 (c) **Produce enduring, quality conservation outcomes that make the greatest ecological**
22 **difference by targeting priority areas that contain important resources or connectivity be-**
23 **tween existing conservation lands;**

24 (d) **Increase the pace of conservation and habitat restoration;**

25 (e) **Provide disincentives for actions that negatively impact priority areas and services;**

26 (f) **Produce a net measurable positive trend in the recovery of species and ecosystems**
27 **that contribute to the full suite of values of biodiversity and ecosystems services;**

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 (g) Complement and add value to other conservation strategies and programs;
- 2 (h) Operate efficiently with low transaction costs; and
- 3 (i) Have clear and predictable rules and provide for transparent, accountable and credible
- 4 transactions.

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6 **ECOSYSTEM SERVICES IN LAND USE, MANAGEMENT**
7 **AND INFRASTRUCTURE DECISIONS**
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9 **SECTION 2.** ORS 197.010 is amended to read:

10 197.010. The Legislative Assembly declares that:

11 (1) In order to ensure the highest possible level of livability in Oregon, it is necessary to provide
12 for properly prepared and coordinated comprehensive plans for cities and counties, regional areas
13 and the state as a whole. These comprehensive plans:

14 (a) Must be adopted by the appropriate governing body at the local and state levels;

15 (b) Are expressions of public policy in the form of policy statements, generalized maps and
16 standards and guidelines;

17 (c) Shall be the basis for more specific rules and land use regulations which implement the pol-
18 icies expressed through the comprehensive plans;

19 (d) Shall be prepared to assure that all public actions are consistent and coordinated with the
20 policies expressed through the comprehensive plans; and

21 (e) Shall be regularly reviewed and, if necessary, amended to keep them consistent with the
22 changing needs and desires of the public they are designed to serve.

23 (2)(a) The overarching principles guiding the land use program in the State of Oregon are to:

24 (A) Provide a healthy environment;

25 (B) Sustain a prosperous economy;

26 (C) Ensure a desirable quality of life; and

27 (D) Equitably allocate the benefits and burdens of land use planning.

28 (b) Additionally, the land use program should, but is not required to[,]:

29 (A) Help communities achieve sustainable development patterns [*and*];

30 (B) Manage the effects of climate change[.]; **and**

31 (C) **Maintain and enhance ecosystem services, as defined in ORS 468.581, for present and**
32 **future generations.**

33 (c) The overarching principles in paragraph (a) of this subsection and the purposes in paragraph
34 (b) of this subsection provide guidance to:

35 (A) The Legislative Assembly when enacting a law regulating land use.

36 (B) A public body, as defined in ORS 174.109, when the public body:

37 (i) Adopts or interprets goals, comprehensive plans and land use regulations implementing the
38 plans, or administrative rules implementing a provision of ORS chapter 195, 196, 197, 215 or 227; or

39 (ii) Interprets a law governing land use.

40 (d) Use of the overarching principles in paragraph (a) of this subsection and the purposes in
41 paragraph (b) of this subsection is not a legal requirement for the Legislative Assembly or other
42 public body and is not judicially enforceable.

43 (3) The equitable balance between state and local government interests can best be achieved by
44 resolution of conflicts using alternative dispute resolution techniques such as mediation,
45 collaborative planning and arbitration. Such dispute resolution techniques are particularly suitable

1 for conflicts arising over periodic review, comprehensive plan and land use regulations, amendments,
2 enforcement issues and local interpretation of state land use policy.

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4 **GOVERNOR'S OFFICE**

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6 **SECTION 3. (1) Before the end of calendar year 2012, the Governor's office, with assist-**
7 **ance from the Oregon Watershed Enhancement Board, shall:**

8 (a) **Facilitate a review of relevant local, state, regional and federal conservation plans**
9 **that could impact ecosystem services as defined in ORS 468.581 and propose a process for**
10 **these plans to be spatially aligned and coordinated, with a focus on potential costs savings**
11 **and efficiencies in the implementation of the conservation plans.**

12 (b) **Develop statewide goals that support the maintenance, enhancement and restoration**
13 **of ecosystem services as described in ORS 468.583.**

14 (2) **The Governor's office shall make information about the process proposed under sub-**
15 **section (1)(a) of this section, and information about the statewide goals developed under**
16 **subsection (1)(b) of this section, available to the public on the website of the Governor's of-**
17 **fice.**

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19 **INSTITUTE FOR NATURAL RESOURCES**

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21 **SECTION 4. (1) The Institute for Natural Resources created under ORS 352.239 shall, to**
22 **the extent practicable, provide information to local governments, state agencies, federal**
23 **agencies, conservation organizations, private landowners and businesses to assist in the de-**
24 **velopment of public domain integrated ecosystem services methodologies that:**

- 25 (a) **Use multiscale modeling applicable to landscape and site level assessments;**
- 26 (b) **Address context in terms of value within the broader ecosystem;**
- 27 (c) **Are applicable to all land and water types;**
- 28 (d) **Address water quality, carbon quantity and diversity functions and values;**
- 29 (e) **Can be applied with low transaction costs;**
- 30 (f) **Incorporate best available ecological information;**
- 31 (g) **Are compatible with existing methodologies where appropriate;**
- 32 (h) **Are transparent;**
- 33 (i) **Provide consistent results;**
- 34 (j) **Quantify ecological values individually and generate an overall ecosystem integrity**
35 **score; and**
- 36 (k) **Provide for the monitoring of cumulative effects and overall program effectiveness.**

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

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41 **STATE AGENCIES**

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43 **SECTION 5. (1) State agencies and local governments may allow the use of credits for**
44 **ecosystem services if compensatory mitigation is used, and shall apply the following guide-**
45 **lines:**

1 (a) The mitigation should result in a net gain in overall ecosystem services, with a clear
2 emphasis on the most sensitive resources;

3 (b) Long-term ecological viability must be considered, and preference given to mitigation
4 sites with the greatest potential to endure;

5 (c) Mitigation investments must be structured for the protection and enhancement of the
6 priority resources identified in state conservation plans;

7 (d) The use of credits for ecosystem services may be allowed in advance of mitigation
8 needs;

9 (e) Service area or special district boundaries must, to the extent practicable, be flexible
10 enough to capture significant ecological benefits;

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

13 (g) Preservation and restoration may be considered as appropriate mitigation strategies.

14 (2)(a) State agencies and local governments must, to the extent practicable, compare cost
15 and consider natural infrastructure as part of, or in lieu of, new development projects and
16 infrastructure.

17 (b) In order to encourage state agencies and local governments to compare cost and
18 consider natural infrastructure as described in paragraph (a) of this subsection, the Oregon
19 Watershed Enhancement Board shall coordinate with state agencies, local governments and
20 the private sector to develop technical assistance tools that support and facilitate the use
21 of natural infrastructure as part of, or in lieu of, new development projects and
22 infrastructure.

23 (3) State agencies may participate in public-private partnerships to develop, test and im-
24 plement ecosystem services approaches and methodologies.

25 **SECTION 6.** State agencies shall, in implementing their duties and in providing any
26 grants for conservations purposes, to the greatest extent practicable, undertake projects and
27 programs that:

28 (1) Are consistent with any state conservation plans;

29 (2) Ensure long-term environmental stewardship;

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

32 (4) Emphasize the protection of high-quality, functioning ecosystems first, and then focus
33 on restoration where such efforts will most likely be successful;

34 (5) Provide incentives to private landowners who voluntarily implement conservation
35 measures on their property; and

36 (6) Are relatively low cost.

37 **SECTION 7.** A state agency may purchase credits for ecosystem services:

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

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

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

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MISCELLANEOUS

1 **SECTION 8.** Sections 4 to 7 of this 2011 Act are added to and made a part of ORS 468.581
2 to 468.587.

3 **SECTION 9.** The unit captions used in this 2011 Act are provided only for the convenience
4 of the reader and do not become part of the statutory law of this state or express any leg-
5 islative intent in the enactment of this 2011 Act.

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EMERGENCY CLAUSE

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9 **SECTION 10.** This 2011 Act being necessary for the immediate preservation of the public
10 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
11 on its passage.

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